

# Assembly of First Nations (AFN)

The Assembly of First Nations' Shadow Report

United Nations Convention on the Rights of Persons with Disabilities

Submitted to: The Committee on the Rights of Persons with Disabilities

February 2025

Identification of Submitting Organization

The Assembly of First Nations (AFN) is a national advocacy organization advancing the collective aspirations of First Nations across Canada on matters of national and international significance.

The AFN hosts at least two Assemblies each year where mandates and directives for the organization are established through resolutions directed and supported by the First Nations in Assembly (elected Chiefs or proxies from member First Nations.) The AFN is also guided by an Executive Committee consisting of an elected National Chief and Regional Chiefs from each province and territory. Five national councils (Knowledge Keepers, Youth, Veterans, 2SLGBTQIA+, and Women) further guide decisions, as will the newly mandated AFN Council on Accessibility and Disability once it is established.

The AFN has several resolutions which support its advocacy related to accessibility and the rights of First Nations Persons with Disabilities (FNPWD). These include:

Resolution 71/2024: Rejecting the Accessible Canada Act and Advancing Distinct First Nations Accessibility Legislation.

Resolution 03/2024: Establishing an Accessibility and Disability Council as a Principal Organ.

Resolution 15/2022: Major Investment to Build Fully Accessible First Nations.

Resolution 10/2018: Resources for Engagement on Distinct First Nations Accessibility Legislation.

Resolution 24/2018: Increased Focus on Disabilities Centered on Human Rights.

The AFN promotes nation-to-nation relationships between the Crown and First Nations, as articulated in treaties, legal instruments, and inherent rights to self-determination as upheld by the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) which the Government of Canada (GoC) has committed to implementing in federal legislation. The AFN advocates for a whole-of-government approach to implementing the UN Declaration, ensuring respect for First Nations' collective rights.

The AFN collaborates with the GoC and international stakeholders to protect human rights, ensuring Canada fulfills its obligations to uphold First Nations rights and treaties. The AFN advocates for adequate, predictable and flexible funding to enable First Nations to design and deliver self-determined healthcare and culturally based wellness approaches that also promote accessibility, disability rights, and inclusion.

Executive Summary

The Assembly of First Nations (AFN) continues its advocacy for the rights of First Nations Persons with Disabilities (FNPWD) through international mechanisms, including the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Despite Canada's ratification of the CRPD in 2010, systemic barriers persist, preventing FNPWD from achieving equitable access to services, inclusion, and human rights. The AFN's Shadow Report critiques and recommends improvements to Canada's approach to accessibility and disability policy,

particularly under the Accessible Canada Act (ACA), which reinforces colonial frameworks, imposes unrealistic compliance standards, and perpetuates systemic inequities.

Systemic inequities persist due to colonial barriers that impact every aspect of life for First Nations Persons with Disabilities (FNPWD). The absence of disaggregated First Nations disability data renders FNPWD invisible in national policy, planning, budgets, and legislation—violating their rights and undermining First Nations governance. Colonial policies like the ACA impose generic frameworks that disregard First Nations governance and treaty rights. Inadequate diagnostic tools fail to reflect First Nations cultural contexts, leading to widespread misdiagnosis, while a \$349.2 billion infrastructure deficit further limits access to essential services and community participation.

These systemic barriers violate FNPWD's rights and contradict Canada's obligations under the CRPD. The Shadow Report highlights these failures, reinforcing the need for distinct, First Nations-led legislative and policy solutions that align with First Nations governance and cultural realities to ensure accessibility and disability inclusion.

## Introduction

This Shadow Report is designed as a direct follow-up to Canada's combined 2nd and 3rd periodic reports, in order of a list of issues (Can. LOI) as identified by the Committee to the CRPD. The AFN's report responds to the list of issues provided by Canada aligning references to specific articles of the CRPD as outlined in the following chart. Each article includes high-level recommendations for the Committee's consideration that, if implemented by Canada, would support improved implementation of the CRPD as it pertains specifically to First Nations Persons with Disabilities.

In 2010, Canada ratified and signed the Convention on the Rights of Persons with Disabilities (CRPD) further committing to the rights of persons with disabilities. In November 2022, Canada provided its combined second and third periodic report to the United Nations Committee on the Rights of Persons with Disabilities which responds to a list of issues provided by the Committee regarding Canada's CRPD implementation and obligations.

This AFN Shadow Report is in response to Canada's submission and is informed by years of ongoing policy work, key initiatives and national engagements undertaken in collaboration with First Nations Persons with Disabilities (FNPWD), First Nations leadership, Knowledge Keepers Advisory Circle, the Chiefs Committee on Health, and various national technical tables. As part of this work, quantitative and qualitative First Nations disability data was gathered through targeted surveys conducted over a nine-month period in 2023. This report is supported by extensive research and data examining the barriers faced by FNPWD across the full scope of federal disability policy, legislation, and programs, as well as broader federal frameworks affecting accessibility and disability inclusion. It highlights systemic barriers such as the infrastructure gap between Canada and First Nations, widespread misdiagnosis, and the lack of disaggregated First Nations disability data—barriers that remain inadequately addressed within federal approaches to disability and accessibility.

While the Accessible Canada Act (ACA) represents a significant legislative step, this report situates it alongside other federal disability policies, including the Disability Inclusion Action Plan (DIAP), the National Autism Strategy (NAS), and the proposed Canada Disability Benefit (CDB). The ACA has drawn serious concern as it imposes penalties of up to \$250,000 per violation for non-compliance with accessibility standards that were neither developed in collaboration with First Nations, nor designed to reflect the realities of First Nations communities. Under current conditions, ACA compliance is unachievable and only stands to further impoverish First Nations.

The ACA standards fail to reflect reasonable, actionable, and achievable goals, and do not account for the fundamental disparities and barriers such as the vast and well-documented \$349 billion infrastructure gap between First Nations and the rest of Canada. The Standards set out in the ACA reinforce systemic inequities and raise the urgent need for a distinct First Nations legislative framework to ensure accessibility standards align

with First Nations governance structures, needs, and capacities. Together, these shortcomings underscore Canada's broader failure to fulfill its obligations under the CRPD.

CRPD articles 1–4. Purpose and general obligations, (Can. LOI 1-10):

The AFN submits that while Canada provided funding in 2019 to 2020, the AFN is not in agreement with Canada's assertion that any multi-year funding has been provided on an ongoing and sustained basis for the AFN to meaningfully engage with First Nations regarding its application of the Accessible Canada Act (ACA). Rather, Canada continues to fail to meet its obligations for sustained funding to support inclusive measures that respect First Nations' rights to self-determination. The AFN continues to work with Employment Social Development Canada (ESDC) to advocate for sustained multi-year funding to advance distinct First Nations accessibility legislation developed by and for First Nations. Moreover, the AFN takes a critical analysis of systemic barriers perpetuated by Canada's actions in advancing colonial disability policies and the ACA without meaningful resources for First Nations to engage in self-determined processes which inform these developments.

This Shadow Report addresses four significant barriers to Canada's compliance with the CRPD, including challenges related to legal reforms, the lack of a unified national strategy for implementation, and insufficient mechanisms and resources to support the full participation of persons with disabilities in the Convention's implementation and monitoring. The four barriers are as follows:

**Infrastructure Gap:** The \$349.2 infrastructure gap between Canada and First Nations, identified through collaboration between the AFN, Indigenous Services Canada (ISC), and industry experts, represents a staggering and foundational barrier preventing Canada from fulfilling its CRPD obligations. This gap presents critical inadequacies in housing, public spaces, transportation, healthcare facilities, and educational infrastructure. These deficiencies disproportionately impact FNPWD, isolating them from essential services and community participation. This gap undermines multiple CRPD articles, including Article 9 (Accessibility) and Article 19 (Living Independently and Being Included in the Community). Without change, FNPWD's rights to independent living, equitable access, or meaningful inclusion are compromised. The lack of modern infrastructure perpetuates systemic inequities by entrenching barriers and denying FNPWD equal opportunities.

**Misdiagnosis, missed diagnosis, and failure to diagnose in First Nations:** The use of invalidated diagnostic tools and frameworks from the field of psychology, which fail to account for First Nations cultures, worldviews, and intergenerational trauma, results in widespread misdiagnosis or lack of recognition for disabilities among FNPWD. This issue disproportionately affects FNPWD, funneling them into inappropriate programs or denying them access to supports. Misdiagnosis undermines Canada's obligations under the CRPD in areas such as equality and non-discrimination (Article 5), inclusive education (Article 24), health (Article 25), and independent living (Article 19).

**Lack of Disability Data:** The absence of comprehensive, disaggregated disability data for First Nations populations creates a critical barrier to addressing the needs of FNPWD. Existing national surveys, such as the Indigenous Peoples Survey (IPS), exclude on-reserve populations, leaving significant gaps in the data required to understand prevalence, barriers, and systemic challenges. This lack of data directly impedes Canada's ability to fulfill its obligations under Articles 5, 9, 13, 24, 25, and 31 of the CRPD. Without reliable data, Canada cannot ensure equitable funding, transparency, or effective disability services for FNPWD.

**The Application of Colonial Policies:** Current policies do not reflect First Nations treaty rights, governance structures, and world views. The ACA not only violates treaty rights by imposing federal accessibility standards that override First Nations jurisdiction, but these policies, developed without First Nations representation or meaningful participation, establish unrealistic standards and penalties for non-compliance. Such frameworks violate CRPD Articles 4, 5, 9, 19, and 29, which emphasize equitable and contextually appropriate policies. Moreover, the ACA and current national disability policies fail to comply with (Article 4); "To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities". Additionally, the disregard for treaty rights undermines

the principle of self-determination enshrined in the UN Declaration. The UN Declaration explicitly affirms the rights of Indigenous peoples to self-determination (Article 3), self-governance (Article 4), and the preservation of distinct cultural and institutional systems (Article 5). The imposition of colonial policies like the ACA violates these principles and highlights the urgent need for a First Nations-led approach that aligns with the UN Declaration's mandate to respect sovereignty and ensure free, prior, and informed consent (Article 19). To fulfill its CRPD obligations, Canada must replace colonial policies with distinct First Nations-led approaches that respect sovereignty and cultural realities.

First Nations require funding supports to establish First Nations regional disability networks among other developments to assist in building fully accessible First Nations governments. Canada continues to fail to meet its obligations for sustained funding to support inclusive measures that respect First Nations' rights to self-determination. The AFN continues to advocate for sustained multi-year funding to advance distinct First Nations accessibility legislation developed by and for First Nations. Moreover, the AFN takes a critical analysis of systemic barriers perpetuated by Canada's actions in advancing the ACA without meaningful resources for First Nations to engage in self-determined processes.

The AFN is critical that these systemic barriers, policies, and legislation continue to impoverish and neglect the human rights of FNPWD while also undermining the rights of First Nations governments. The AFN Shadow Report highlights how these systemic barriers, in addition to other pervasive gaps, are embedded in Canadian policies, laws, programs, and practices, preventing Canada from fulfilling its obligations to FNPWD in accordance with the CRPD.

Canada's implementation of the CRPD is a shared federal, provincial and territorial responsibility. A distinctions-based approach, meaning one that respects the distinct rights, treaties and decision-making processes of First Nations rather than addressing all Indigenous people and organizations together without consideration for First Nations' governance structures, and a whole-of-government approach must be at the forefront of the CRPD. A whole-of-government approach would assist in relationship building and alleviate jurisdictional issues.

First Nations-in-Assembly passed AFN Resolution 71/2024, Rejecting the Accessible Canada Act and Advancing Distinct First Nations Accessibility Legislation. This resolution mandates the AFN to reject the ACA and its application to First Nations by 2026. The ACA's colonial framework is incompatible with First Nations' cultural worldviews, governance systems, and the reality of the significant infrastructure gap in First Nations. Moving forward with its implementation would perpetuate the cycle of disadvantage experienced by FNPWD, stemming from its failure to address systemic issues, including the lack of relevant infrastructure, data, and culturally appropriate services, products, and supports.

In addition, AFN Resolution 25/2021, Strengthen First Nations Distinctions-Based Approaches on Accessibility/Disabilities directs the AFN to review and update mandates where pan-Indigenous organizations may be representing First Nations on disability matters domestically and internationally. The AFN asserts that many pan-Indigenous disability groups are not considered, or set up, to be representative or accountable organizations of First Nations in Canada, or in international fora. As a result, the lack of formal and accountable consultation mechanisms under the ACA has perpetuated barriers impeding access for accountable and representative organizations like the AFN to achieve multi-year funding to facilitate engagements with First Nations to inform First Nations-specific accessibility legislation.

The ACA received royal assent on June 21, 2019, and came into force on July 11, 2019. The first set of ACA regulations came into force in 2021 and established a five-year exemption regarding First Nations and the Act. This interim exemption ends in 2026 and is intended to allow engagement with First Nations regarding the application of the ACA and subsequent regulations. The AFN Distinct First Nations Accessibility Law Discussion Guide has found that the ACA is problematic in that it does not reference First Nations, offer resources or consider the liabilities of the ACA for First Nations. Almost all First Nations are not accessible due to chronic underfunding in the areas of health, infrastructure, and education, First Nations services, and on-going impacts of

colonization, and systemic barriers. To date, no funding has been provided to First Nations to upgrade infrastructure, programs, and services to meet the standards set out in the ACA by 2026.

Under the implementation of the ACA, Accessibility Standards Canada (ASC) is the federal agency responsible for developing and regulating national accessibility standards to be met, yet First Nations were neither required to be included in its governance nor meaningfully represented in the standard-setting process. Despite being left out of the process, the ACA requires all First Nations Band Offices and First Nations organizations including service delivery entities to meet these standards (i.e., housing, health, and social services). In view of Canada's colonial framework and disregard for the significant infrastructure gap and lack of data, and culturally appropriate services, products, and supports in First Nations, the AFN rejects the ACA and its application in First Nations by 2026.

Recommendations:

Canada respects and commits to undertaking First Nations distinctions-based approaches and reviews all instances where pan-Indigenous organizations may be holding instructions to represent First Nations on disability matters domestically and internationally.

Canada to commit to multi-year federal funding and timely research and data collection to support First Nations governments and regions in advancing accessibility. This includes building fully accessible First Nations, closing infrastructure gaps that create barriers to accessibility, and establishing First Nations Regional Disability Networks.

CRPD Article 6. Women with Disabilities (Can. LOI 22-27)

The AFN has expressed deep concern over the marginalization, injustice, and poverty faced by First Nations women with disabilities (FNWWD), which are compounded by intersecting factors such as labeling, stigma, and discrimination. This intersectional reality creates "triple jeopardy," amplifying barriers to accessing essential services, supports, and educational opportunities. Doreen Demas, Dakota First Nation and member of the Indigenous Persons with Disabilities Global Network and the Indigenous Persons with Disabilities Caucus, said, "Women with disabilities speak of double jeopardy. I believe that Native women who have a disability are in a situation of triple jeopardy. You may be familiar with many of the concerns that Aboriginal people in Canada have: poor housing conditions, lack of adequate medical care, and substance abuse. When you add disability and being female to this, you have a situation of extreme disadvantage".

The AFN has highlighted the lack of adequate resources provided by the Government of Canada to meet the distinct needs of FNWWD, particularly in accessing post-secondary education. These challenges are further exacerbated by systemic issues such as poor housing conditions, inadequate medical care, and substance abuse within First Nations communities. Addressing these entrenched inequities requires the implementation of comprehensive, culturally responsive policies that prioritize the unique experiences and voices of FNWWD, with a focus on advancing their economic, educational, and social inclusion.

To better understand the realities faced by First Nations persons with disabilities, the AFN conducted a survey of 127 FNPWD, of whom 71% identified as women. The findings reveal critical barriers and inequities that disproportionately impact women with disabilities. For instance, 72% of respondents reported being unable to afford caregiver support, and 68% lacked access to affordable work and skills training programs. Progress in eliminating prejudice remains limited, with 58% of respondents experiencing discrimination within their communities and families, highlighting pervasive stereotypes that hinder inclusion. Access to education is also a significant concern, with 24% of respondents fearing exclusion from educational programs due to disability status. These findings call for robust, gender-sensitive research to inform policies that address financial, social, and cultural barriers, while ensuring First Nations women with disabilities are aware of and supported in claiming their rights under the Convention.

Recommendations:

Fund intersectional research on barriers faced by FNWWD addressing financial, social, educational, and cultural challenges. Ensure findings inform culturally responsive policies and programs.

#### CRPD article 7. Children with Disabilities (Can. LOI 5 a. b. c)

Limited measures have been taken to systematically collect disaggregated data at all levels of government on the situation and discrimination of First Nations children with disabilities. There is a lack of data about children with disabilities and their families to assist in formulating targeted culturally sensitive strategies and programs to address specific forms of discrimination against them. This includes effective measures to address the overrepresentation of First Nations children with disabilities in the child and family services system.

A long-standing legal battle initiated by Harriet Sumner-Pruden in 2010 on behalf of her son, Alfred (Dewey) Pruden, highlights the critical gaps in access to disability services for First Nations children in Manitoba. The agreement reached in October 2024 includes commitments from the province to expand children's disability services and home care eligibility to First Nations children living on-reserve and to create a working group with federal and First Nations governments to determine the best ways to deliver these services. The AFN continues to advocate for the GoC to provide predictable, stable, sustainable, and needs-based statutory funding for First Nations to exercise their jurisdiction and establish their own laws, including resources to support First Nations-led research and data collection.

#### Recommendations:

Develop safeguards and make meaningful investments to reduce the overrepresentation of First Nations children with disabilities in child and family services systems by addressing poverty amongst First Nations, addressing inadequate and insufficient services and systemic gaps in supports for First Nations children, and ending systemic discrimination.

Implement a comprehensive framework for disaggregated data on First Nations children with disabilities, capturing their experiences in education, child and family services, and healthcare systems to inform equitable strategies.

#### CRPD article 8. Raising Awareness (Can. LOI 35-39)

The absence of robust, culturally grounded awareness initiatives in First Nations systematically denies FNPWD their rights to full inclusion and participation. As the Winnipeg Regional Health Authority (WRHA) highlights, culturally unsafe practices are defined as actions that diminish or disempower cultural identity, and this can arise when awareness efforts fail to address power imbalances, historical trauma, and systemic inequities. The 2021 report by the First Nations Health and Social Secretariat of Manitoba further underscores that current services and supports for FNPWD, particularly on-reserve, often lack cultural safety or appropriateness, as they fail to fully address the diverse and complex needs of First Nations individuals across their lifespan. Without integrating cultural values and understandings into awareness campaigns, stigma and prejudice persist, undermining the dignity and self-determination of FNPWD.

Addressing this gap requires a strategic plan for raising awareness that is accessible across First Nations while being adaptable to the unique beliefs and realities of each First Nation. Such a plan must emphasize cultural competence, ensuring that individuals and systems recognize and affirm First Nations values in ways that preserve the dignity of FNPWD. Cultural safety demands a deliberate effort to transform power structures and address institutional prejudice. This approach to awareness-raising would involve First Nations-designed and led cultural safety training, fostering respect for First Nations perspectives on aging, disability, and caregiving, and highlighting the complexity of First Nations determinants of health.

The AFN has taken a significant step toward addressing these systemic barriers through the establishment of the Accessibility and Disability Council, formalized by Resolution 03/2024. This Council, recognized as a "Principal

Organ" under the AFN Charter, is mandated to provide assistance, guidance, and advocacy to advance the rights of FNPWD and promote culturally grounded, intersectional approaches to accessibility. Its' composition prioritizes representation of FNPWD from diverse lived experiences and ensures regional representation. To fulfill its mandate effectively, the AFN Accessibility and Disability Council requires predictable and sustained funding. As the only First Nations disability advocacy structure with representation of FNPWD from across all First Nations regions, the Council is essential to implementing a national awareness-raising strategy, supporting First Nations-led initiatives, and ensuring Canada meets its obligations under the CRPD.

Recommendations:

Canada must commit to sustained, predictable, long-term funding for the AFN Accessibility and Disability Council to enable its mandate of advancing culturally grounded approaches to accessibility and raising awareness for FNPWD.

CRPD article 9. Accessibility (Can. LOI 40-48)

In December 2021, the Accessible Canada Regulations were published requiring federally regulated organizations including the AFN to prepare and publish accessibility plans without the provision of meaningful multi-year funding for them to carry out these objectives. AFN Resolution 38/2018, Ensuring Accessibility at the AFN, calls on the GoC to provide meaningful resources to meet the organizations requirements of the ACA.

The AFN is concerned that First Nations were not included or represented in the Accessibility Standards Canada (ASC), including the lack of representation of First Nations participation in the governance structure of regulating the ACA. For example, the legislation provides for a Minister, Accessibility Commissioner, ASC (formerly Canadian Accessibility Standards Organization) and Chief Accessibility Officer to administer the ACA, or ACA standards and regulations development process for the ASC board. While the ASC is required to consult with Indigenous Peoples, there was no formal written procedure or guarantee that distinct First Nations perspectives were heard and appropriately conveyed in regulations. There was no official process or meaningful mechanism in collaboration with First Nations to be formally represented and consulted in these developments. The ACA continues to perpetuate barriers to the inclusion and rights of First Nations.

Recommendations:

Ensure sustainable funding for the AFN and First Nations to meet the standards set out in the ACA.

Fund the development and implementation of distinct First Nations accessibility legislation to ensure accessibility within First Nations communities.

CRPD article. 10. Right to Life (Can. LOI 49-57)

The AFN is concerned about Canada's approach to Medical Assistance in Dying (MAID), particularly its disproportionate and harmful impact on FNPWD. Canada's expanded MAID legislation, allowing eligibility without a reasonably foreseeable natural death, has raised significant ethical concerns about the risks posed to vulnerable populations, including FNPWD, who already face systemic barriers and inequities. In September 2024, the CCD, along with other disability rights organizations, filed a Charter challenge against Canada's MAID law. Krista Carr, Executive Vice-President of Inclusion Canada said, "This law also sends a devastating message that life with a disability is a fate worse than death, undermining decades of work toward equity and inclusion. It's time to put an end to helping people with disabilities commit suicide and start supporting them to live."

Engagements with First Nations on this issue have been limited, rushed, and insufficiently inclusive, restricting the meaningful participation in policy development. First Nations continue to face significant and well-documented gaps in access to equitable palliative care, culturally safe healthcare services, and social and economic supports. The prioritization and funding of MAID over these critical supports exacerbates systemic inequities and risks further marginalizing FNPWD, particularly those already affected by poverty, discrimination,

and inadequate access to services.

Such profound decisions about life and death must be made from a place of equity and cultural safety and honour distinct First Nations end-of-life protocols. Canada must take serious measures to dutifully consult with First Nations and implement, fully and meaningfully, UN Declaration Article 19, which requires states to obtain free, prior, and informed consent from Indigenous peoples through their representative institutions before adopting policies that affect them. Additionally, Canada must fulfill its obligations under CRPD, particularly Article 10, by ensuring that First Nations have equitable access to culturally responsive care and that systemic inequities are addressed. Furthermore, the lack of culturally safe engagement with First Nations on MAID reflects a failure to uphold the principles of free, prior, and informed consent under the UN Declaration, underscoring the urgent need for a rights-based and inclusive approach.

Recommendations:

Immediately initiate meaningful, inclusive engagements on the applicability and risks of expanded MAID with First Nations leadership, Knowledge Keepers, and persons with disabilities, ensuring free, prior, and informed consent (UN Declaration Article 19).

Fund accessible palliative care, culturally appropriate healthcare, and social supports tailored to First Nations communities.

Ensure compliance with CRPD obligations by addressing barriers that push vulnerable populations, such as FNPWD, toward MAID due to inadequate supports.

CRPD article 13. Access to Justice (CAN LOI 13)

The AFN is critical of the lack of access to justice often experienced by FNPWD including the inability of vulnerable FNPWD to be afforded the promotion and protection of their human rights to access necessary supports, accommodations or modifications that would meet their unique and diverse accessibility needs. There are multiple and intersectional barriers experienced by FNPWD and girls with disabilities that are not acknowledged or actioned by government authorities and this population continues to face high levels of prejudice and marginalization. Moreover, Canada has done little to address ingrained discrimination against this population, allowing forced sterilizations to continue.

In 2013, Doreen Demas, Dakota First Nation, who was an avid disability advocate, offered insights into the bleak reality of FNPWD and girls with disabilities, explaining “some women and girls with disabilities cannot identify their abuser due to their disability” as in cases where the victim is blind. Demas further added, “many deaf and hard of hearing women and girls and other disabled women and girls in Indigenous communities cannot communicate because they have had no access to sign language or any language” (International Disability Alliance, 2013, p. 2).

Barriers to justice are likely to affect many FNPWD, including men, Two-Spirit individuals, and children; the lack of disaggregated data collection on FNPWD, comprehensive research on their experiences in the justice system remains limited. This absence of data not only deepens the marginalization of FNPWD but also hinders the development of effective solutions to address their unique challenges.

Recommendations

Amend the Criminal Code of Canada to recognize forced sterilization as a specific offense and an act of genocide.

CRPD article 14. Liberty and security of the person (Can. LOI 13)

Canada continues to fail to adequately address the overrepresentation of persons with intellectual or psychosocial disabilities, as well as Indigenous and migrant persons with disabilities, in federal and provincial prisons and detention facilities. The systemic barriers, rooted in colonialism and institutional discrimination, disproportionately impact FNPWD, exacerbating cycles of incarceration and poverty.

Indigenous people are significantly overrepresented in Canadian correctional facilities, accounting for 32% of federally incarcerated individuals despite comprising only 5% of the general population. Among incarcerated populations, the prevalence of disabilities—particularly mental health conditions, substance use disorders, and cognitive impairments—is notably high, further compounding the systemic inequities faced by these individuals. In a study conducted across all provincial prisons in British Columbia between 2009 and 2017, the percentage of individuals experiencing both mental health issues and substance use disorders were found to grow from 15% to 32%. The prevalence of methamphetamine use disorder increased by almost five times from 6% to 29%, while heroin use disorder rose from 11% to 26%. The overall proportion of individuals with either mental health or substance use challenges expanded from 61% to 75%.

The Office of the Auditor General of Canada's Report 4 – Systemic Barriers – Correctional Service Canada indicates that Indigenous inmates frequently face disproportionate barriers to justice and rehabilitation, reflecting broader systemic failures within the Canadian correctional and justice systems. A report by “DisAbled Women's Network Canada” (DAWN Canada) highlights that many incarcerated women experience undiagnosed traumatic brain injuries, exacerbating their challenges in accessing justice and rehabilitation supports.

Many FNPWD face inadequate access to legal representation, mental health supports, and culturally relevant services during their interaction with the justice system, compounding the challenges they encounter while detained. Indigenous women with disabilities and autistic persons are particularly vulnerable in detention facilities. They often face stigma, neglect, and a lack of individualized accommodations that respect their dignity and meet their specific needs.

Incarcerated individuals with disabilities frequently experience violations of their human rights, including a lack of accessible communication supports, insufficient medical care, and a failure to provide reasonable accommodations as mandated under the Convention on the Rights of Persons with Disabilities (CRPD).

There is an urgent need for the adoption and implementation of comprehensive, culturally informed guidelines to ensure that individualized supports are provided to all persons with disabilities who are detained in federal and provincial prisons and detention facilities. These guidelines must address the unique needs of FNPWD, including access to mental health and wellness services, culturally relevant programming, and support for reintegration into their community's post-detention.

Additionally, the absence of disaggregated data on the experiences of FNPWD in the justice system remains a critical barrier to identifying and addressing systemic inequities. Canada must prioritize data collection to better understand and respond to the unique challenges faced by FNPWD in the justice system. The lack of data perpetuates cycles of systemic marginalization and prevents FNPWD from accessing justice on an equal basis with others, as required under CRPD Article 14. It further highlights Canada's failure to fulfill its obligations to protect the liberty and security of the person for FNPWD.

Recommendations:

Invest in comprehensive, disaggregated data collection on FNPWD in the justice system, covering gender, age, and disability type to inform solutions.

Provide accessible services, including sign language and accommodations, for FNPWD during judicial proceedings. Prioritize advocacy and support for children with disabilities.

Develop programs to help FNPWD transition from detention to community life, focusing on housing, employment, and mental health and wellness supports.

#### CRPD article 16. Freedom from Exploitation, Violence & Abuse (CAN LOI 84-92)

The AFN has significant concerns regarding Canada's inadequate response to Section 3.2 of the Calls for Justice issued by the National Inquiry into Missing and Murdered Indigenous Women and Girls which calls on governments to fund Indigenous-centred and community-based health and wellness services. The systemic violence, exploitation, and neglect experienced by First Nations women, girls, and 2SLGBTQQIA+ individuals (MMIWG2S+) demands immediate, sustained action to address the colonial and systemic injustices that continue to threaten their safety and lives. Canada must fulfill its obligations to protect First Nations women, girls, and 2SLGBTQQIA+ individuals from all forms of violence, exploitation, and systemic discrimination. Without immediate and meaningful action, the ongoing crisis undermines the principles of justice and equality enshrined in international human rights frameworks, including the Convention on the Rights of Persons with Disabilities (CRPD), Article 15.

#### Recommendations:

Collaborate with First Nations to effectively fund and implement Calls for Justice to address systemic issues like human trafficking, forced sterilization, and forced apprehensions, which disproportionately affect FNPWD.

#### CRPD article 17. Protecting the Integrity of the Person (Can. LOI, 93-94)

First Nations women and girls with disabilities in Canada face multiple barriers that are often unacknowledged and unaddressed by government authorities, leading to persistent prejudice and marginalization. Canada has done little to address ingrained discrimination against First Nations women, allowing forced sterilizations to continue. Bill S-250, an act to amend the Criminal Code (Coerced Sterilization), is a crucial step in the implementation of the MMIWG2S+ Calls for Justice. This bill addresses the need for legislative change in response to the ongoing issue of coerced sterilization, a practice that disproportionately affects Indigenous women, girls, and two-spirit people. Bill S-250 was amended substantially to streamline its content, notably removing the previous provisions on safeguards regarding sterilization. The bill is currently awaiting First Reading in the House of Commons.

#### Recommendations:

Support amendments to Bill S-250 to strengthen legal protections for free, prior, and informed consent, addressing linguistic and cultural barriers in medical decision-making.

#### CRPD article 19. Living Independently, being included in the Community (Can. LOI, 19, 97-101)

AFN Resolution 25/2024, First Nations with Disabilities Across the Lifespan Services On-Reserve responds to Indigenous Services Canada's (ISC) critical failure to fund and support equal access to services for adults with disabilities for their full and equal participation in First Nations communities. As a result, FNPWD and their families are often forced to access disability services and supports away from their culture and community. In 2022, a claim with the Canadian Human Rights Tribunal was filed by Alberta First Nations on the grounds of continuous discrimination by ISC based on race, national/ ethnic origin, and disability. Similarly, over 30 recommendations in the Supporting the Gifts of First Nations Adults Living with Exceptionalities report advocate for enhanced services and supports for First Nations adults living with disabilities.

#### Recommendations:

Create a federally funded framework to ensure seamless transitions from youth to adult services for FNPWD, addressing gaps in healthcare, employment, and education.

Establish agreements between federal and provincial governments to prevent service disruptions and ensure accountability for FNPWD support.

To uphold the dignity of FNPWD and enable FNPWD to remain in their communities, ensure access to assisted living services to promote independence, respite services, essential caregiver support, home care, long-term care facilities, and medical transportation in First Nations communities through reforms and ongoing investments into a wholistic long-term and continuing care system.

#### CRPD article 13. Respect for Home and the Family (Can. LOI 106-110)

There is concern with the over-representation of FNPWD and First Nations children in child and family services across the country and within First Nations. Today, there are greater numbers of Indigenous children in the child welfare system than at the height of the Indian Residential School system. Forced apprehension of infants and children from their families—historically and today— creates complex trauma for birth parents, children, and families and has lasting intergenerational effects. These practices disproportionately affect FNPWD, who face systemic barriers to accessing culturally appropriate and equitable support services that could help keep families together. The Canadian Human Rights Tribunal (CHRT) has found that the First Nations Child and Family Services Program has been underfunded for decades, amounting to “willful and reckless” discrimination, and perpetuating this overrepresentation that requires immediate and meaningful action to address. Prioritizing prevention and supporting families to stay together, including families comprised of caregivers with disabilities and/or children with disabilities, is the best way to move forward.

#### Recommendations:

Reform child and family services systems to eliminate harmful practices, address the over-representation of First Nations children and FNPWD in care, prioritize family reunification through culturally safe and rights-based approaches, and prioritize prevention over apprehension.

Support the development and funding of First Nations-led child and family wellbeing systems that prioritize keeping children within their communities and align with international human rights obligations, including CRPD Article 16.

#### CRPD article 24. Education (CAN. LOI 111-113)

Immediate action is required to address the systemic challenges faced by First Nations students with disabilities by implementing a transparent, data-driven approach to funding allocation and for inclusive education support services. The use of the term “inclusive education” reflects a strength-based approach, recognizing the diverse First Nations’ understandings of ability, disability, and gifts. The Interim Funding, which is based on the provincial comparability formula, falls short in addressing the unique inclusive education cost drivers experienced by First Nations, such as scarcity of qualified staff within remote First Nations communities, higher incidence rate of students with special needs, intergenerational trauma, and additional costs stemming from lack of economies of scale. To supplement their funding, First Nations rely on the High-Cost Special Education Program (HCSEP), and Jordan’s Principle funding. The HCSEP funds additional services for students assessed with moderate to profound learning disabilities. While Indigenous Services Canada (ISC) requires First Nations to submit their HCSEP workplans (proposals), their impact on the actual funding amounts received is very limited.

Jordan’s Principle has become a key funding source for expenses related to Inclusive Education, including the hiring of speech and language therapists, occupational therapists, mental health counselors, conducting assessments, and more. In the 2021-2022 fiscal year alone, Jordan’s Principle funding for education products and services approved through group and individual requests equaled \$47,850,048 and \$79,045,633 respectively. Notably, individual education requests saw a 56% increase of approved funds from 2020-2021. This data underscores the systemic underfunding of inclusive education in First Nations communities, necessitating a targeted and reliable solution to address students’ needs.

The AFN is further concerned that First Nations in the regions have a set allocation for funding in the High-Cost Special Education Program, and requests have started to outweigh the amount of available funding, which is causing requests to be redirected through Jordans Principle to address these needs. The AFN is critical that ISC

continues to refuse to increase the funding in this program, thereby perpetuating intersectional systemic barriers for First Nations students with disabilities and concerns of human rights violation. ISC has done this despite their own concrete data available through Jordan's Principle signalling heightened need for funds and resources to support inclusive education.

The AFN is gravely concerned about the devastating impact of misdiagnosis on First Nations students, which perpetuates cycles of marginalization and entrenches inequities in education. Misdiagnoses, often the result of culturally inappropriate diagnostic tools which themselves reflect systemic racism, undermine efforts to achieve inclusive education by misidentifying the true needs of students and directing resources toward inappropriate interventions. This is a direct barrier to equitable education and demands immediate attention.

The Canadian Psychological Association (CPA), in its report to the Truth and Reconciliation Commission (TRC), underscores the scale and harm of this issue, highlighting how First Nations students are being misdiagnosed with learning disabilities, developmental delays, or low intelligence. These misdiagnoses funnel students into restrictive academic programs, limiting their potential. The limited research available on this issue shows that Indigenous students in British Columbia are disproportionately identified with special needs, such as learning disabilities and behavior disorders. Such overrepresentation in special education programs implies a failure to address the root causes of students' challenges and perpetuates inequities in educational outcomes such as attendance in post-secondary programs.

Furthermore, the lack of available data on the number of First Nations students who have been diagnosed, misdiagnosed, or whose learning needs have been missed entirely, highlights the urgent need for research. Understanding this gap is critical to addressing the systemic issues that contribute to alarmingly low on-reserve graduation rates, which remain below 40%, compared to over 80% for non-Indigenous students in Canada.

Recommendations:

Increase funding for inclusive education programs, ensuring they reflect the unique cost drivers in First Nations communities, such as high special education needs and lack of economies of scale.

Provide funding for specialized professionals, including sign language interpreters, occupational therapists, and mental health wellness counselors, and cultural support workers to ensure equitable access to education for FNPWD.

Allocate resources to provide culturally informed diagnostic tools and training for professionals, ensuring that interventions align with First Nations contexts and lived realities.

CRPD article 25. Health (Can. LOI 114-117)

The crisis of misdiagnosis in First Nations healthcare constitutes a serious public health issue that undermines equitable access to care and perpetuates systemic inequities. The Canadian Psychological Association, in its report to the Truth and Reconciliation Commission, describes the state, "In brief, the current situation in Canada with regard to the psychological assessment of Indigenous Peoples is a dire one. We lack the tools, training, understanding of culture, and appropriate recommendations to consistently provide meaningful helpful psychological assessments to Indigenous Peoples." ■The misuse of diagnostic tools and treatment methods that are not normed or validated for First Nations populations has resulted in widespread harm, including delayed or inappropriate care, stigmatization, and long-term health consequences . These failures affect not only individuals but entire communities, compounding public health disparities and eroding trust in healthcare systems.

Also found in it's report to the TRC, the CPA identified psychological assessments as a tool of colonial harm, noting that they have been misused to pathologize Indigenous ways of being and to further cultural genocide. Many First Nations peoples are critical of assessment tools, noting that they are not culturally responsive for their community. This misuse continues to have grave public health consequences, as it leads to misdiagnoses, harmful treatments, and the perpetuation of stigma surrounding invisible disabilities, such as PTSD, mental

illnesses, or learning disabilities. The resulting gaps in health data obscure the true prevalence of disability in First Nations communities, further entrenching inequities and limiting the effectiveness of public health policies.

Addressing misdiagnosis in First Nations healthcare is not only a matter of individual care but a public health imperative. Misdiagnosis represents a public health crisis because it perpetuates delayed or inappropriate care, exacerbates health inequities, and significantly impacts the health and well-being of First Nations communities. The Public Health Agency of Canada (PHAC) highlights that systemic inequities in healthcare disproportionately affect marginalized populations, leading to worsened outcomes and creating long-term societal impact. Similarly, the Canadian Institute for Health Information (CIHI) emphasizes that culturally unsafe healthcare practices undermine trust and access to necessary care, compounding the challenges faced by First Nations Peoples. These systemic failures also hinder progress toward achieving the United Nations Sustainable Development Goal 3, which calls for ensuring healthy lives and promoting well-being for all, particularly for vulnerable populations.

Recognizing misdiagnosis as a public health crisis reinforces the urgent need for systemic reforms to align healthcare practices with the principles of cultural safety and equity. It also highlights Canada's obligation under CRPD Article 25 to provide healthcare that is free from discrimination, respects the unique contexts of First Nations Peoples, and upholds their right to the highest attainable standard of health.

#### Recommendations:

Recognize the widespread issue of misdiagnosis among First Nations as a public health crisis and support the reform of culturally informed diagnostic tools and resources guided by FNPWD among others, for the empowerment of First Nations to challenge or reject misdiagnoses until culturally appropriate diagnostic frameworks are implemented.

Ensure that health assessments emphasize lived experiences, intergenerational trauma, and community contexts, adopting wholistic, strength-based methods that support wellness.

Equip healthcare professionals with comprehensive training in First Nations knowledge systems, and culturally responsive practices to prevent misdiagnosis and promote equitable care.

#### CRPD article 27. Work and Employment (Can LOI 119-125)

The AFN maintains that there is currently no funding targeted specifically for persons with disabilities under the Workforce Development Agreements with First Nations and this will be an important opportunity to uphold up the rights and inclusion of FNPWD in future developments. In addition, the Indigenous Skills and Employment Training (ISET) agreement holders have identified the need for greater investments into First Nations employment and training to address gaps, analyze economic trends and provide labour force statistics. As an example, the First Nations-in-Assembly passed AFN Resolution 64/24, First Nations Labour Market Information to address gaps for ISET agreement holders and create capacity to provide accurate up to date First Nations labour market information to ESDC. This work aims to develop long-term strategic labour market planning, human resource strategies, and address needs and related capacity and infrastructure requirements for First Nations employment and training programs and services for the equitable inclusion of FNPWD.

Additionally, the 2008/10 First Nations Regional Health Survey (RHS) identified that First Nations living on-reserve with an income less than \$20,000 per year were more likely than those earning higher incomes to have a severe disability. This finding highlights a significant trend, drawing attention to the barriers faced by FNPWD, particularly those with limited income. While the On-Reserve Income Assistance Program has some provisions for clients with disabilities, these supports are not robust and fail to sufficiently address the higher cost of living and the additional resources required for FNPWD to enter or re-enter the workforce. The AFN's 2023 Income Assistance Program Reform policy recommendations highlight the need to improve supports for clients with disabilities, including ensuring income assistance rates reflect the needs of First Nations with disabilities and their caregivers.

While the RHS provides valuable insights into health and wellness trends in First Nations communities, including mental wellness indicators such as psychological distress and substance use, its primary definition of disability focuses on long-term physical conditions that limit daily activities. This definition may not fully capture all aspects of disability in First Nations. To ensure no FNPWD are overlooked, robust, disaggregated, and intersectional data collection is essential. Expanding the scope of disability data collection to include intersectional factors such as gender, age, location (rural, remote, urban), misdiagnosis, and specific disability types is critical to fully understand and address the complexities of disability in First Nations.

#### Recommendations:

Increase funding for First Nations ISET agreement holders to address the needs of the First Nations labour market and adjust with population growth, inflation, and the ability to build infrastructure and capacity for service delivery.

Develop targeted programs addressing the unique barriers for FNPWD aged 18 to 30, including employment readiness, higher education access, and workplace accommodations.

Strengthen data collection and analysis on the intersection of disability, employment, income assistance, and financial security in First Nations. Use a comprehensive definition of disability alongside a disaggregated and intersectional framework to ensure a nuanced and accurate understanding of these issues.

Address the needs of FNPWD accessing the On-Reserve Income Assistance Program through increased rates that adequately reflect the needs and higher costs of persons with disabilities, as per AFN Resolution 29/2023, Support for First Nations Persons with Disabilities on Income Assistance.

#### CRPD article 28. Adequate Standard of Living and Social Protection (Can. LOI 127-131)

The AFN has repeatedly called on the GoC to engage meaningfully with First Nations governments and FNPWD to develop financial support programs that reflect First Nations citizens and First Nations governments unique needs. AFN Resolution 110/2019, Funding for First Nations- specific programs, services and supports for adults with disabilities and Resolution 55/2018, First Nations Disability Program on Reserve highlight the necessity of a culturally sensitive, adequately funded disability services and supports within the On-Reserve Income Assistance Program.

While initiatives such as the Canada Disability Benefit (CDB) signify incremental progress, their design and funding frameworks fall critically short of addressing the unique socio-economic and human rights realities faced by FNPWD. For example, the CDB's allocation of \$2,400 per year—or \$200 per month—for eligible claimants fails to meet the actual financial needs of persons with disabilities. Given this, it is reasonable to conclude that the CDB would also fall short in meeting the needs of FNPWD, whose circumstances are further exacerbated by systemic barriers that hinder their ability to qualify for the benefit. This formulaic, one-size-fits-all approach ignores the distinct health, socio-economic, and geographic realities of FNPWD, particularly in remote and underfunded First Nations communities. Similarly, the On-Reserve Income Assistance program's disability allocation of \$213.5 million over five years equates to a mere \$67,350 annually per First Nations community—an amount wholly inadequate to ensure financial security and increased service access for FNPWD living on-reserve.

Additionally, the AFN has serious concerns about the \$349.2 billion required to close the First Nations infrastructure gap by 2030, including \$135.1 billion specifically allocated for First Nations housing needs. These investments are critical to supporting the goals of the National First Nations Housing Strategy and addressing the systemic housing crisis that disproportionately impacts FNPWD. FNPWD are among the most vulnerable populations at risk of experiencing homelessness, as inadequate housing, inaccessible infrastructure, and insufficient disability supports exacerbate their segregation and marginalization. The Office of the Federal Housing Advocate's final report on homeless encampments highlights the urgent need for new resource

allocations and meaningful engagement with First Nations to address homelessness. The report underscores the intersection between homelessness and the lack of adequate housing and infrastructure, which disproportionately impacts FNPWD in First Nations.

Recommendations:

Commit to closing the \$349.2 billion First Nations infrastructure gap by 2030, including \$135.1 billion for housing, to ensure accessible, safe living environments for FNPWD.

CRPD article 29. Participation in political and public life (Can. LOI 132-140)

ESDC's Social Development Partnerships Program (SDPP) remains largely inaccessible to First Nations governments, and organizations, including the AFN. Further, the SDPP has a limited scope of funding where First Nations are often set up to compete with hundreds of disability groups including pan-Canadian and pan-Indigenous groups (First Nations, Inuit, and Métis) which often receive funding on behalf of First Nations. Canada's preference for homogenized funding approaches disrespects efforts to strengthen distinctions-based funding approaches to advance the distinct cultural needs and rights of FNPWD. The AFN continues to assert that pan-Canadian and many pan-Indigenous disability groups are not considered, or set up, to be representative or accountable organizations of First Nations in Canada.

Recommendations:

Transition from pan-Indigenous accessibility funding approaches to a whole-of-government strategy with multi-year funding for fully accessible First Nations.

Collaborate on distinct First Nations accessibility and disability legislation, ensuring adequate resources and mechanisms for capacity-building.

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CRPD articles 31-33. Specific obligations

Canada's lack of efforts to address its obligations to meet the rights and distinct needs of FNPWD in the absence of comprehensive and reliable First Nations disability-specific data violates (CRPD Art. 31). The absence of distinct First Nations disability data renders FNPWD invisible in national policy, planning, budgets, and legislation. Several studies and reports indicate that First Nations peoples experience a higher rate of accessibility and disability issues than the general Canadian population. The lack of disability data specific to First Nations reinforces colonial assumptions that First Nations experience disability in the same way as the non-First Nations Canadian population.

Further, the AFN is critical that the ACA neglected to provide a formal mechanism to collect or analyze data specific to First Nations accessibility services, protections, or opportunities for self-advocacy. The ACA also failed to mandate First Nations-specific data collection, perpetuating systemic harm by denying FNPWD the evidence base needed to support and substantiate their needs, advocate for resources, shape policies, and budget for accessibility in First Nations. In the absence of specific data on FNPWD, resources are often distributed based on national averages and non-First Nations contexts, leading to chronic underfunding for First Nations accessibility projects. This lack of data effectively denies FNPWD the support they need, reinforcing existing human rights disparities and compounding barriers to participation, services, and the right to community life.

Under Art. 32, Canada must collaborate with First Nations to develop policies, diagnostic tools, and programs that reflect First Nations worldviews and practices. This collaboration should ensure these elements are incorporated into all government policies impacting FNPWD and advance the capacity of First Nations to engage in international cooperation frameworks.

In the context of Art. 33, the AFN emphasizes the need for a framework to monitor and evaluate the effectiveness of legislation, funding allocations, and programs for FNPWD using First Nations-specific data to identify barriers and track progress. The AFN further recognizes the issue of misdiagnosis as a widespread challenge that must be addressed through culturally informed diagnostic tools, professional training, and mechanisms for individuals to challenge or reject misdiagnoses until appropriate standards are implemented. Recognizing First Nations sovereignty in addressing accessibility and disability challenges, there is a need to support First Nations-led initiatives to develop culturally informed solutions.

Recommendations:

Establish a framework for culturally safe, First Nations-led data collection on FNPWD, addressing gaps in health, education, justice, and employment to inform evidence-based policy development.

Collaborate with First Nations to develop policies, diagnostic tools, and programs that reflect First Nations worldviews and practices, ensuring these are incorporated into all government policies impacting FNPWD.

Create clear frameworks to monitor and evaluate the effectiveness of legislation, funding allocations, and programs for FNPWD using First Nations-specific data to identify barriers and track progress.