



NATIVE WOMEN'S ASSOCIATION OF CANADA SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW (UPR)

44th SESSION OF THE UPR WORKING GROUP

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Organization Background

This report is submitted to the United Nations Human Rights Council (UNHRC) for the review of the fulfillment by Canada of its human rights obligations and commitments through the Universal Periodic Review (UPR) scheduled for the 44th UPR session.

The Native Women's Association of Canada (NWAC) is a National Indigenous Organization representing the political voice of Indigenous Women, Girls, Two-Spirit, Transgender, and Gender-Diverse+ (WG2STGD+) Peoples in Canada. Incorporated as a non-profit organization in 1974, NWAC works to advance the well-being and equality of Indigenous women through advocacy, education, research, and policy. NWAC is founded on the collective goal to enhance, promote, and foster the social, economic, cultural, and political well-being of Indigenous Women, Girls, Two-Spirit, Transgender, and Gender-Diverse+ Peoples within their respective communities and Canadian societies.

Key Issue #1: Missing and Murdered Indigenous Women, Girls, and Two-Spirit Peoples (MMIWG2S+)

In response to recommendations 51 (a, b), 52, 53, and 54 in the Government of Canada's (GoC) 2018 UPR Report,ⁱ and Call for Justice 1.1 (i) from the National Inquiry into Missing and Murdered Indigenous Women and Girls' 231 Calls for Justice, the federal government has made limited progress to address the ongoing MMIWG2S+ genocide. In 2021, the GoC released its National Action Plan (NAP); however, NWAC found this plan did not sufficiently address Call for Justice 1.1(i) as the plan was neither costed nor measurable.

NWAC observed the downfalls in the NAP in the following year when we developed our Annual Scorecardⁱⁱ, which formally tracks the federal government's progress on their NAP. NWAC ultimately concluded the GoC failed to act, stating that while "we have seen some progress made, there is an overall lack of concrete actions, accountability, and transparency required to end this genocide". In total, the NAP outlined 30 actions – 16 of these actions had some progress, while 14 actions had none.

NWAC urges the United Nations Human Rights Commission and its working committees, and the GoC, to commit to *urgent* action to end the ongoing genocide of MMIWG2S+.

Recommendations

The GoC must:

- Develop a costed, measurable action plan implementing the 231 *Calls for Justice*, to recognize that these are not recommendations; they are legal imperatives.
- Increase funding for projects and programs for Indigenous WG2STGD+ Peoples to access safe housing, shelter, legal assistance, and healing services.
- Prioritize the development of a MMIWG2S+ Alert System, as well as other mechanisms, to ensure the safety of Indigenous WG2STGD+ Peoples.
- Establish accountability mechanisms to track implementation of the 231 Calls for Justice, as committed to in the NAP.

Key Issue #2: The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

By enacting the *United Nations Declaration on the Rights of Indigenous Peoples Act*ⁱⁱⁱ, the GoC signalled its intention to harmonise its laws with UNDRIP to foster reconciliation with Indigenous Peoples.^{iv}

In response to recommendations 11-15, 20 (a, b, c, d) in their 2018 UPR Report, the GoC's progress report released on June 2022 provides the following updates:

- On June 21, 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act received Royal Assent and came into force (Bill C-15).
- living Department of Justice (DOJ) has established a new secretariate that will support the implementation of UNDRIP across government departments and in collaboration with Indigenous partners.
- The DOJ announced \$23.6 million in funding available to support the consultation process, particularly focused on identifying Indigenous priorities to develop the action plan.
- Efforts have been made to educate, inform, and advise government departments on roles and responsibilities.^v

In November 2022, NWAC released "Gender-based review on the implementation of the UNDRIP Act" to identify and elaborate on gender-based priorities for the implementation of the UNDRIP Act. The report summarized several barriers and issues for Indigenous WG2STGD+ Peoples that reflect patterns of great distrust between Canada's government and Indigenous Peoples resulting from the following: failure to honour treaties signed with Indigenous Peoples; failure to consult with Indigenous WG2STGD+ Peoples; provincial and federal division of powers that abstract Indigenous Peoples' right to self-determination; sex-based discrimination within Indigenous governing bodies; and ongoing colonial harms that persist through intergenerational trauma.

In addition to participating in funded consultations and engagements with Indigenous leaders and those with relevant lived experiences to inform Canada's action plan to implement UNDRIP, NWAC recommends that the action plan must contain specific, measurable actions, and specifically involve Indigenous WG2STGD+ Peoples. NWAC has also suggested Canada enact an impartial body to monitor whether UNDRIP is being meaningfully enacted.

Further, NWAC urges Canada to align federal laws with UNDRIP, with specific emphasis on legislative reform to address Indigenous women's overincarceration rates. Indigenous women continue to be sent to jail at rates that far exceed their non-Indigenous counterparts and the incarceration rates of Indigenous women continues to rise, recently reaching 50% of the federal prison population.^{vi} Despite several reports recommending reform, including reports from the Senate of Canada, the OCI and legal academics, the GoC has not enacted meaningful changes.

Sub Issue: Membership Rights

A relic from Canada's colonial legacy is the country's legal authority to determine which Indigenous people are eligible for Indian status membership under the *Indian Act*. Indian status membership provides

economic and membership benefits, depending on separate classes of status which the GoC assigns based on an applicant's ability to demonstrate family lineage. When Canada denies full status membership, the applicant and their children (and grandchildren) may be ineligible to participate in legally protected activities in accordance with their Indigenous customs.

Indian Act membership laws have a long history of denying equality to Indigenous women and their children. The GoC amended these laws numerous times to redress inequality, but the *Indian Act* membership laws still create separate classes and still give the government the final word on whether to bestow membership status, contradicting Article 33 of UNDRIP. The GoC indicated plans to table legislation in 2022 to address remaining inequities in the *Indian Act*'s registration provisions. The Committee on the Elimination of Discrimination against Women (CEDAW) recently issued the same plea, urging Canada to address the *Indian Act*'s remaining inequities.^{vii}

Recommendations

The GoC must:

- Respect and adhere to the international legal treaties and obligations by which it is bound. This includes the human rights protections found within the CEDAW, the ICCPR^{viii}, the ICESCR^{ix}, the CRC, the UNGA^x resolution on environmental rights, and other UN-based human rights frameworks.
- End membership distinctions under the *Indian Act* that create separate classes with separate entitlements. As Canada moves to align its laws with UNDRIP, the *Indian Act* membership provisions must be transitioned to Indigenous self-determination.

Key Issue #3: Truth and Reconciliation Commission (TRC) of Canada

In 2015, the GoC accepted the Truth and Reconciliation Commission (TRC) of Canada's findings that colonial policies enacted through the Indian Residential School (IRS) system, which forced Indigenous children to leave their communities to attend assimilatory institutions, was cultural genocide.

The TRC issued 94 Calls to Action, outlining a pathway towards reconciliation. Calls to Action 71-76 deal with information related to cases of Indigenous children who went missing or who died while attending IRS.^{xi} Since 2021, investigations conducted at IRS sites across Canada uncovered what many Indigenous Peoples always knew to be true – the remains of countless of Indigenous children are still located, unmarked, at the grounds of former IRS sites. The GoC appointed a Special Interlocutor on IRS Burial Sites to protect and preserve these sites, as well as to recommend legislative amendments to govern practices related to the sites.^{xii}

In response to Canada's 2018 UPR Report, recommendations 22-24 (a, b, c, d, e), NWAC reports it has seen very little action to answer the TRC's 94 Calls to Action, including those related to unmarked burial sites. Indigenous-led thinktank, the Yellowhead Institute^{xiii}, tracks the GoC's annual progress on the Calls to Action and, in 2022, reported that as of December 1, 2022, 38% of the 94 Calls to Action are either "not started" or stalled.

Recommendations

- The GoC must act to accelerate the implementation of each of the 94 Calls to Action.
- As Indigenous communities continue to search the sites of former IRSs for unmarked graves, support must be available for communities to undertake this work. This includes critical culturally-specific, trauma-informed healing supports.
- NWAC demands that all sites of former IRSs be declared crime scenes and that further investigation be conducted to ensure criminal accountability for these deaths.

Key Issue #4: Indigenous Languages

In response to recommendations 35 and 36 of their 2018 UPR Report, the GoC has failed to make significant progress in addressing the following commitments toward Indigenous languages.

In 2019, the GoC passed the *Indigenous Languages Act* to support the efforts of Indigenous Peoples to reclaim, revitalize, maintain, and strengthen their Indigenous languages.^{xiv} The Act, which responds to TRC Calls to Action 13, 14, and 15, still fails to define Indigenous language rights and provide provisions outlining the GoC's responsibility to protect these rights.^{xv} This failure places the burden on Indigenous Peoples to assert their pre-existing rights and does not align with the government's stated commitment to implement UNDRIP.

Recommendations

- The GoC must fund Indigenous language revitalization and protection.
- Canada should enact legislation to affirm Article 14 of UNDRIP, recognizing the rights of Indigenous children to be educated in their own language.

Key Issue #5: Health

In response to recommendations 25-27 (a, b, c, d) and 28 in their 2018 UPR Report, the GoC's progress has been insignificant in addressing a wide range of factors that impact Indigenous WG2STGD+ Peoples' health, including access to clean drinking water, and overall health and mental health disparities as compared with non-Indigenous people.

Water

Access to water is a basic human right that continues to be denied to Indigenous communities across Canada. In December 2020, Indigenous Services Canada (ISC) affirmed its earlier commitment (and the governing party's election promise) to eliminate all long-term drinking water advisories on public water systems by March 31, 2021, would not be met. ISC has subsequently pushed back this deadline to 2025, but it has not provided guarantees this revised deadline will be met. As of March 17, 2023, 138 long-term drinking water advisories in Indigenous communities have been lifted since November 2015; 32 long-term drinking water advisories remain in effect in 28 communities. Indigenous women and children without access to clean, safe drinking water live far below the highest attainable health standards prescribed in the CRC, CEDAW, and UNDRIP.

Recommendations

- The GoC must prioritize the elimination of all boil water advisories in Indigenous communities and the sustainability of Indigenous water systems.
- All governments, in partnership with Indigenous organizations, must include Indigenous WG2STGD+ Peoples in water governance and decision-making.

Anti-Indigenous Racism in Canada's Health Care System

Anti-Indigenous systemic racism produces health inequalities for Indigenous WG2STGD+ Peoples in Canada. This issue received international attention in September 2020 following the tragic death of Atikamekw woman, Joyce Echaquan, as a result of racism, misogyny, and neglect while seeking care in a Québec hospital. Joyce's Principle, a response to this tragic incident, responds to Article 24 of UNDRIP, which seeks to guarantee Indigenous Peoples' rights to equitable access to all social and health services without discrimination as well as the right to enjoy the best possible physical, mental, emotional, and spiritual health.

In 2020, the Prime Minister of Canada publicly stated that systemic racism exists in Canada and all its institutions. Similarly, the 2021 British Columbia health care report "In Plain Sight: Addressing Indigenous-specific Racism and Discrimination" found that the majority of Indigenous Peoples in BC have encountered racism and discrimination within the health care system, whether as a patient or as

health care workers.^{xvi}

Recommendations

1. The GoC must act on TRC Calls to Action 18-24, UNDRIP Article 24, and MMIWG2S+ Calls for Justice 3.1, 3.2, 3.6, 7.1-7.8, 17.21-17.23, 16.7-16.9, and 18.27-18.31, acknowledge that the current state of Indigenous health care in Canada is a direct result of colonial policies, and recognize the health care rights of Indigenous Peoples as affirmed in constitutional law, international law, and treaties.
2. NWAC urges all governments and health care institutions to fully implement Joyce's Principle and ensure all First Nations, Métis, and Inuit have equitable access to health and social services without racism or discrimination.
3. The GoC must provide legislative protection for Indigenous Peoples' inherent right to determine their health care.

Mental Health

The historical and ongoing fallout from colonization in Canada has resulted in adverse mental health outcomes among most Indigenous communities in Canada. The COVID-19 pandemic exacerbated ongoing mental health crises as access to culturally-relevant mental health supports was inhibited. Statistics Canada noted that 48% of Indigenous women reported symptoms consistent with moderate and severe anxiety, while 64% reported the worsening of their mental health since the implementation of physical distancing restrictions at the onset of the COVID-19 pandemic.^{xvii}

The 2022 federal budget committed \$227.6 million over two years to developing a distinctions-based approach to mental health and wellness, developed and delivered by Indigenous Peoples.

Recommendations

- In response to TRC Calls to Action 21 and 22 and MMIWG2S+ Calls for Justice 7.1-7.5, 16.7, 17.23, 18.27, the GoC must sustainably fund Indigenous-led mental wellness initiatives.

Key Issue #6: First Nations Child and Family Services and Jordan's Principle

In Canada, 53.8% of children in the foster care system are Indigenous, despite only accounting for 7.7% of the child population. The most recent National Census reports an increase of Indigenous children in the foster care system, rising from 52.2% in 2016 to 53.8% in 2021.

The GoC enacted federal legislation to facilitate Indigenous self-determination over childcare service provision to begin the work of redressing harms stemming from the legacy of IRSs.^{xviii} The GoC funded NWAC's work to review this Act's effectiveness, and this review is ongoing^{xix}.

Canada recently agreed to apply Jordan's Principle, a legal principle mandating Canada to provide Indigenous children the health supports they need upfront and resolve costs and jurisdictional disputes with provinces later in response to vast inequities Indigenous children faced when seeking medical and health supports.

In January 2022, Canada negotiated a plan to provide financial redress to Indigenous children and families affected by its discriminatory funding patterns in child and family service provision and in failing to attain the standards set out under Jordan's Principle.^{xx} This Agreement-in-Principle follows a series of decisions from the Canadian Human Rights Tribunal (CHRT) and the Federal Court of Appeal holding Canada accountable for its "willful and reckless" discrimination in the way it funded Indigenous children's child and family services and health services.^{xxi}

On January 4, 2022, the GoC negotiated an Agreement-in-Principle on long-term reform to the First Nations Child and Family Services (FNCFS) program. This seeks to provide more culturally-based and

substantially equal family supports, and includes approximately \$20 billion over 5 years for FNCFS to reform programs and eliminate discrimination in the system. The parties to this negotiation have yet to finalize the agreement, and the CHRT confirmed the negotiated agreement does not fully satisfy its remedy order.

Recommendations

- The GoC must fully comply with the CHRT’s order to issue compensation payments to children and families who suffered under Canada’s discriminatory underfunding of Indigenous child and family services and health services.

Key Issue #7: Housing

In response to their 2018 UPR Report’s recommendations 104, 105, and 106, the GoC has failed to address housing and homelessness among Indigenous Peoples. NWAC’s research^{xxii} indicates the following:

- Indigenous Peoples are overrepresented in experiencing homelessness, with one-third of the homeless population identifying as Indigenous.
- Indigenous Peoples across Canada experience discrimination at elevated rates while searching for affordable and safe housing, with 43.8% of survey respondents indicating experiences of discrimination when searching for housing.
- Approximately 57.8% of survey respondents in NWAC’s 2020 “Housing: Policy and Engagement” survey could not meet their basic needs after paying for housing expenses, and 48% of respondents noted experiencing health issues caused by housing.
- A lack of housing and shelter accessibility, especially in remote northern and rural communities, compounds the ongoing MMIWG2S+ genocide and violence against Indigenous WG2STGD+ Peoples.

Recommendations

- Additional federal funding is needed to support Indigenous WG2STGD+ Peoples’ access to affordable housing, especially in remote northern and rural communities.
- An independent housing strategy that recognizes the distinct needs of First Nations, Inuit, and Métis communities must be created.
- Indigenous WG2STGD+ Peoples experience unique challenges accessing affordable and safe housing and must be consulted in the development of housing plans, policies, and strategies.
- To address interconnected barriers, including food insecurity and access to connectivity, the GoC must respond to MMIWG2S+ Calls for Justice 1.3, 4.5, and 16.20 on supporting a guaranteed livable income to ensure Indigenous Peoples are able to meet their household’s basic needs.

ⁱ Government of Canada. 2018. *Canada’s National Report: Third Universal Periodic Review*. Canadian Heritage. Ottawa, ON.

ⁱⁱ Native Women’s Association of Canada. 2022. *Canada’s MMIWG2S National Action Plan Annual Scorecard*. Native Women’s Association of Canada. https://nwac.ca/assets-knowledge-centre/FEDERAL_ANNUAL_SCORECARD_ACTIONPLAN_2022_2022-06-03-132116_mfnq.pdf

ⁱⁱⁱ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [“UNDRIPA”].

^{iv} *Reference*, *supra* note 2 at para 512.

^v Department of Justice Canada. June 2022. “Annual progress report on implementation of the *United Nations Declaration on the Rights of Indigenous People Act*”. <https://www.justice.gc.ca/eng/declaration/report-rapport/2022/index.html>

^{vi} Office of the Correctional Investigator. December 17, 2021. “Proportion of Indigenous Women in Federal Custody Nears 50%: Correctional Investigator Issues Statement.”. *Government of Canada*. <https://www.oci-bec.gc.ca/cnt/comm/press/press20211217-eng.aspx#:~:text=Correctional%20Investigator%20Issues%20Statement,-For%20Immediate%20Release&text=Ottawa%2C%20December%2017%2C%202021%20%E2%80%93,of%20all>

[%20federally%2Dsentenced%20women.](#)

^{vii} UN Committee on the Elimination of Discrimination Against Women. March 3, 2022 “UN women’s rights committee urges Canada to amend transgenerational discriminatory Indian Act.” <https://www.ohchr.org/en/press-releases/2022/03/un-womens-rights-committee-urges-canada-amend-transgenerational>.

^{viii} International Covenant on Civil and Political Rights

^{ix} International Covenant on Economic, Social and Cultural Rights

^x United Nations General Assembly

^{xi} Truth and Reconciliation Commission of Canada. 2015. “Calls to Action.” Winnipeg, MB.

https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf.

^{xii} Department of Justice Canada. August 10, 2021 “Backgrounder: Special Interlocutor on Indian Residential Schools (IRS) Unmarked Burial Sites.” *Backgrounder*. <https://www.canada.ca/en/departement-justice/news/2021/08/backgrounder-special-interlocutor-on-indian-residential-schools-irs-unmarked-burial-sites.html>.

^{xiii} Yellowhead Institute. 2022. “Calls to Action Accountability: A 2022 Status Update on Reconciliation.” *Yellowhead Institute*. <https://yellowheadinstitute.org/wp-content/uploads/2022/12/TRC-Report-12.15.2022-Yellowhead-Institute-min.pdf>

^{xiv} *Indigenous Languages Act*, SC 2019, c 23.

^{xv} Ontario Federation of Indigenous Friendship Centres. “A Review of Bill C-91: An Act Respecting Indigenous Languages.” <https://ofifc.org/wp-content/uploads/2020/03/2019-02-26-Position-on-Bill-C-91-an-Act-Respecting-Indigenous-Languages.pdf>

^{xvi} Government of British Columbia. January 29, 2021. *In Plain Sight: Addressing Indigenous-Specific Racism and Discrimination in BC Health Care*. <https://engage.gov.bc.ca/app/uploads/sites/613/2020/11/In-Plain-Sight-Summary-Report.pdf>

^{xvii} Arriagada, Paula, Tara Hahmann and Vivian O’Donnell. June 23, 2020. “Indigenous people and mental health during the COVID-19 pandemic.” *Statistics Canada*.

^{xviii} *An Act respecting First Nations, Inuit and Métis children, youth and families* SC 2019, c 24.

^{xix} Native Women’s Association of Canada. 2022. “Backgrounder on *An Act respecting First Nations, Inuit and Métis children, youth and families*.” <https://nwac.ca/assets-knowledge-centre/CFS-Grassroots-Backgrounder.pdf>

^{xx} First Nations Child and Family Caring Society of Canada. January 19, 2022. “AIP on Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle.” https://fncaringsociety.com/sites/default/files/aip_on_long-term_reform_info_sheet_english.pdf.

^{xxi} *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 at para 15.

^{xxii} Native Women’s Association of Canada. March 31, 2020. “Indigenous Housing: Policy and Engagement – Final Report to Indigenous Services Canada.”