

Submission of the Assembly of First Nations to the
UN Expert Mechanism on the Rights of
Indigenous Peoples



*Study on the Right to Health and Indigenous Peoples with a focus on
Children and Youth*

February 29, 2016



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Who we are (Assembly of First Nations)

The Assembly of First Nations (AFN) is the national representative organization of First Nations in Canada. The AFN is mandated by First Nations leadership to advocate on behalf of First Nations on a broad range of socio-economic rights issues including but not limited to: Inherent and Treaty rights, human rights, lands and waters, resources, environment, economic development, education, languages revitalization, literacy, health, housing, social development, justice, and taxation. The AFN represents First Nations people living on reserves as well as those living in rural, northern and urban communities.

As it stands today, there are 634 First Nations in Canada with diverse languages, cultures, economies as well as diverse governance and land tenure systems. Some rely on traditional economies and others rely more heavily on the wage economy and various forms of development activities.

Most First Nations have reserves, which are of varying sizes. Beyond reserve lands, First Nations have rights in their traditional territories as peoples and nations. These include treaty and “aboriginal” (inherent) rights which have been affirmed and recognized by s. 35 of the *Constitution Act, 1982*.

The UN *Declaration on the Rights of Indigenous Peoples* affirms the equal right of Indigenous peoples to self-determination, and to all fundamental human rights which include the rights in the *International Covenant on Economic, Social and Cultural Rights*. The AFN has long sought to work with the federal government to ensure Canada establishes with First Nations processes and mechanisms to promote, monitor and ensure the implementation of the UN *Declaration on the Rights of Indigenous Peoples* in Canada and UN human rights instruments including the *Expert Mechanism on the Rights of Indigenous Peoples* and *International Covenant on Economic, Social and Cultural Rights*.

Article 1 – The Equal Right of Peoples to Self-Determination

First Nations traditional territories are among the richest territories in the world in terms of renewable and non-renewable resources. Yet our people live in the worst social and economic conditions relative to the vast majority of Canadians. A reality contributing to this situation is that our right to self-determination is rarely, if ever, considered in government controlled resource regulatory decision-making. First Nations are too often deprived of our own means of subsistence, both in traditional economies and wage-based economies, because of a failure of statutory frameworks and policies to properly take account of First Nations’ right to self-determination. In this regard, the principle of free, prior and informed consent is an important means of implementing First Nations’ right to self-determination and confirms our equal place as peoples in resource decision-making. More recently, there are some encouraging signs that some governments in Canada (e.g. the newly elected federal government and the government of Alberta) are willing to engage with First Nations on implementation of the right to self-determination.

There are several barriers to the realization and respect of First Nations' right to self-determination in Canada. Some of these barriers include:

- A lack of knowledge or capacity among many federal, provincial and territorial policy makers respecting Canada's international human rights obligations in their specific application to Indigenous peoples - and specifically, a lack of understanding that Indigenous peoples enjoy the right to self-determination expressed in section 1 of the *International Covenant on Economic, Social and Cultural Rights*;
- The absence of proper mechanisms and machinery of government to ensure reviews of how, and whether, proposed laws and policies affecting First Nations social, economic and cultural rights are consistent with the constitutionally protected rights of First Nations and the rights expressed in the UN *Declaration on the Rights of Indigenous Peoples* - before being presented to either Cabinet or legislatures for decision;
- Failure to create resource regulatory review processes that respect the rule of law by requiring consideration of the Crown's consultation and consent obligations under both Canada's constitution and international law **before** development decisions are made.
- Failure to ensure that prior to decision making by Cabinet (or by tribunals, boards, commissions or other agencies) that there is: 1) meaningful consultation by the Crown with First Nations and not simply engagement with Industry proponents; 2) discussion with First Nations of Treaty and Inherent rights infringement issues, legal duty to consult and consent issues; and 3) a sharing with First Nations of the Crown's legal analysis of rights infringement issues as part of meaningful consultation on the potential impacts of development projects on First Nations' rights.

These capacity issues, policy failures and process design flaws have forced First Nations to resort to expensive, lengthy litigation, often lasting decades, to assert and protect their constitutionally protected rights and their right to self-determination in their traditional territories. The impacts of the proposed Site C Hydroelectric project in British Columbia on the West Moberley First Nation and Prophet River First Nation is an example of an acknowledged failure by Cabinet to carry out a Treaty rights infringement analysis prior to approval of an environmental certificate by federal and provincial Cabinets. This is one of many such situations across Canada.

However, the Assembly of First Nations is encouraged by the fact that the federal government elected on October 19, 2015, has committed to end adversarial relationships with First Nations, to renew the nation to nation relationship and to adopt an approach based on rights recognition. The federal government has committed to implementing the Calls to Action of the Truth and Reconciliation Commission, beginning with work with First Nations and other Indigenous Peoples to implement the UN *Declaration on the Rights of Indigenous Peoples*.

Recommendations:

- **Canada be asked to reflect, as required, in its domestic law and policy and other decision-making (e.g. project approval decisions) that Indigenous peoples hold an equal right to self-determination under section 1 of the CESCR as confirmed by the UN Declaration on the Rights of Indigenous peoples.**

- **Canada should immediately implement a standard of free, prior and informed consent in respect of resource projects consistent with the *Declaration on the Rights of Indigenous People*.**
- **Canada be asked to work with First Nations through structured, properly resourced dialogue processes to reform law and policy governing resource regulatory decision-making to ensure compliance with the Crown’s consultation and consent obligations under international law and under Canada’s constitution.**
- **Canada be asked to carry out, with First Nations, a law and policy review (and in particular a review of federal land claims policies, self-government policy, additions to reserves, Treaty land entitlement policies) and related processes to ensure these support, and are consistent with, First Nations’ right to self-determination.**
- **Canada be asked to work with Treaty First Nations on strategies to ensure the enforcement of pre-1975 Treaties.**
- **Canada be asked to work with First Nations on strategies to ensure the enforcement of so called “modern” claims and self-government agreements.**
- **Canada be asked to adopt policy frameworks that acknowledge that the Inherent and Treaty rights of Indigenous peoples are inalienable; and that Indigenous peoples should not be requested to agree to extinguish, relinquish, suspend, cede or release their Inherent or Treaty rights as a provision of agreements about their fundamental rights as peoples.**
- **Canada be asked to jointly develop with First Nations a national action plan on the *Declaration on the Rights of Indigenous Peoples*, and that includes implementation, evaluation and monitoring strategies specific to First Nations.**
- **Canada be asked to formally repudiate the racist doctrine of discovery as a rationale for the Crown’s asserted sovereignty over Indigenous lands and Indigenous peoples.**

First Nations Socio-Economic Disadvantage and the link to Canada’s Rights Implementation Problem (CESCR Articles 1,2,6,7,11,15)

The social and economic gap between First Nations and Canadians has been well documented in countless reports stretching back decades. In 1967, the Hawthorne report stated bluntly: “It is more or less plainly recognized that the Indians have long been neglected and that their economic and social position is well below that of other Canadian citizens. A Northern Affairs official has summed up the situation in these few words: During the first 90 years of our existence the Indian people of Canada have not shared in our growth in the way those of us whose parents and grandparents have come to this country have done. The enormous economic gap between the Indian and non-Indian communities is due to the fact that for a very long time, the Indians were excluded from the economic life of the rest of Canada.”¹

¹ Indian and Northern Affairs Canada, *A Survey of the Contemporary Indians of Canada Economic, Political, Educational Needs and Policies: Part 2* (The Hawthorn Report, October 1967) at <https://www.aadnc-aandc.gc.ca/eng/1291832488245/1291832647702>

This gap in social and economic outcomes is broadly-based, spanning a range of health, social, education and economic indicators and is now the same size it was in 1981 - according to Canada's own measurements and analysis. Canada's Community Well-Being Index (CWB) is a means of measuring socio-economic well-being in First Nations, Inuit and non-Aboriginal communities. The CWB combines data on income, education, housing and labour force activity into well-being "scores".

The most recent CWB report for First Nations concludes that: "The CWB gap between First Nations and non-Aboriginal communities is substantial. In 2011, the average CWB score for First Nations communities was 20 points lower than the average score for non-Aboriginal communities. This gap is the same size as it was in 1981. During the 1990s, First Nations communities improved slightly faster than non-Aboriginal communities and the gap narrowed. Those reductions in the gap were largely undone when non-Aboriginal communities improved more than First Nations communities between 2001 and 2006."² The same report concludes that the narrowing of the gap that occurred during the 1990s did not resume after 2006.

In his 2014 report, UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya commented: "The statistics are striking. Of the bottom 100 Canadian communities on the Community Well-Being Index, 96 are First Nations and only one First Nation community is in the top 100."³ In this same report, the Special Rapporteur noted: "It is difficult to reconcile Canada's well-developed legal framework and general prosperity with the human rights problems faced by indigenous peoples in Canada that have reached crisis proportions in many respects" and also that, "The most jarring manifestation of these human rights problems is the distressing socio-economic conditions of indigenous peoples in a highly developed country."⁴

The Assembly of First Nations has, on many occasions, drawn attention to the fact that the significantly disadvantaged social and economic conditions that First Nations experience, relative to the rest of Canada, are very much linked to the failure of Canada to ensure First Nations collective rights and fundamental human rights are properly respected and implemented. Likewise, many reports of UN Treaty bodies, Special Rapporteurs as well as many expert bodies in Canada have analyzed and commented on the interdependence between rights implementation and the socio-economic gap.

² Aboriginal Affairs and Northern Development Canada. (2015). *The Community Well-Being Index: Well-Being in First Nations Communities, 1981-2011*. Ottawa: Her Majesty the Queen in Right of Canada, represented by the Minister of Aboriginal Affairs and Northern Development.

³ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/27/52/Add.2at para 32. See also the Committee on the Elimination of All Forms of Racial Discrimination, Concluding Observations (2012) at para 19. And see Aboriginal Affairs and Northern Development Canada. (2015). *The Community Well-Being Index: Well-Being in First Nations Communities, 1981-2011*. Ottawa: Her Majesty the Queen in Right of Canada, represented by the Minister of Aboriginal Affairs and Northern Development (at <https://www.aadnc-aandc.gc.ca/eng/1345816651029/1345816742083>).

⁴ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/27/52/Add.2at paras 14 and 15.

In its 2015 Final Report, the Truth and Reconciliation Commission of Canada reminded Canadians and their governments that the Royal Commission on Aboriginal Peoples in its 1997 report emphasized that Indigenous peoples' right to self-determination is essential to a robust upholding of Canada's constitutional obligations to Aboriginal peoples and compliance with international human rights law.

Truth and Reconciliation Commission of Canada – 2015 Calls to Action

The Truth and Reconciliation Commission of Canada (TRC) was established as part of the Indian Residential School Settlement Agreement to which AFN is a party. The TRC released its final report in December 2015 and many Canadians were shocked to learn for the first time of Canada's history of human rights violations and the physical and/or sexual abuse of First Nations students that took place for generations in federal Indian Residential Schools. This report was released after 6 years of impressive work, 7 National events, 2 regional events and over 238 days of hearings involving over 6000 witnesses.

The TRC explained in its final report that "reconciliation" is about establishing and maintaining a mutually respectful relationship between Indigenous and non-Indigenous peoples in Canada; and for that to happen, there has to be awareness of the past, acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour.

The TRC issued 94 Calls to Action aimed at governments, Indigenous peoples, faith based bodies, civil society partners and all Canadians to ensure that the discrimination and horrendous abuse inflicted through the Indian residential schools system is never repeated and that it is acknowledged and addressed through the development of a comprehensive national framework for reconciliation. The TRC emphasized that a national reconciliation framework must be grounded in the human rights and fundamental rights of Indigenous peoples, and in particular the implementation of the United Nations *Declaration on the Rights of Indigenous Peoples*. The TRC also clearly stated that the Treaty, constitutional, and human rights of First Nations, Inuit, and Métis peoples must be recognized and respected.

The TRC advised that reconciliation requires constructive action to address the ongoing legacies of colonialism that have had destructive impacts on Indigenous peoples' education, cultures and languages, health, child welfare, administration of justice, and economic opportunities and prosperity. In addition, the TRC concluded that reconciliation must involve closing the gaps in social, health, and economic outcomes that exist between Indigenous and non-Indigenous Canadians.

Social and economic disparities between First Nations and other Canadians are also related to Canada's failure to rectify the effects of past policies. The Truth and Reconciliation Commission of Canada concluded: "For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and

operation of residential schools were a central element of this policy, which can best be described as ‘cultural genocide.’”⁵

The relentless pursuit of forced assimilation policies through much of the 19th and 20th centuries was followed by policies that denied the existence of the structural inequalities rooted in continuing impacts of colonialism on Indigenous peoples. In addition, Canada has attempted to both devolve responsibility and shift blame for social and economic conditions of First Nations to the First Nations themselves and to debate responsibility between federal and provincial jurisdictions. What has been lacking is a serious commitment to rectify the policies of the past. Too often governments in Canada simply point to budget figures⁶ and do not focus on outcomes through rigorous and joint (i.e. with First Nations) priority setting, evaluation and program renewal. All of this needs to be carried out within a proper analysis of what is required to achieve substantive equality at a collective and individual level.

This policy of negligent inaction has devastating impacts. In 2014, the UN Special Rapporteur on the rights of indigenous peoples noted: “Although in 2004 the previous Special Rapporteur recommended that Canada intensify its measures to close the human development indicator gap between indigenous and non-indigenous Canadians in health care, housing, education, welfare and social services, there has been no reduction in that gap in the intervening period in relation to registered Indians/First Nations, although socioeconomic conditions for Métis and non-status Indians have improved, according to government data.”⁷

Yet, on some issues, the true extent of the socio-economic gap is unknown! This is because the federal government is unable to provide, and is unwilling to fund, studies for inclusive and disaggregated statistics on a range of issues, for example on infant mortality and on food security.⁸ Absence of a meaningful evidence base for decision-making dramatically increases the difficulty of assessing whether government or First Nations actions are effective in reducing the gap.

In addition to Canada’s CWB Index, a few examples of the many reports documenting the failure of Canada to act with sufficient commitment and efficacy to address the gap include:

⁵ Truth and Reconciliation Commission, Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada, online: [http://www.trc.ca/websites/trcinstitution/File/2015/Honouring the Truth Reconciling for the Future July 23 2015.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Honouring%20the%20Truth%20Reconciling%20for%20the%20Future%20July%2023%202015.pdf)

⁶ A focus on raw funding levels is unproductive because aggregate funding numbers often include amounts spent on federal administration or First Nations administration – the latter is often seriously underfunded and over-worked. It is remarkably difficult in many cases to trace the amount of funding which is actually received by its intended beneficiaries from the aggregate amount allocated or reported. In addition, some First Nations do not rely heavily on federal transfers. Indeed, if First Nations were capable of unlocking the wealth of their lands, territories and resources, few would need federal transfers – the role of the federal government would likely be more to enable information-sharing and evaluation so that First Nations could determine optimal choices during designing their own programs.

⁷ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/27/52/Add.2 at para 15.

⁸ See, for example, the CERD Concluding Observations at para 7.

- Auditor General of Canada, *2011 June Status Report of the Auditor General of Canada*
- David MacDonald and Dan Wilson, *Poverty or Prosperity: Indigenous Children in Canada* (Ottawa: Canadian Centre for Policy Alternatives, 2013).
- The National Aboriginal Economic Development Board, *The Aboriginal Economic Progress Report, 2015*.

In 2011, Canada's Auditor General concluded that several federal departments and agencies had not made satisfactory progress in implementing recommendations relating to some of the most important issues of concern to First Nations, including education, housing, child and family services, and administrative reporting requirements. Three federal organizations had made repeated commitments to action. However, the Auditor General found that those commitments and subsequent actions have often not resulted in improvements; and that in some cases, conditions have worsened since earlier audits: "the education gap has widened, the shortage of adequate housing on reserves has become more acute, and administrative reporting requirements have become more onerous".⁹

The 2013 *Poverty or Prosperity* report found that the average child poverty rate for all children in Canada is 17%, while the average child poverty rate for all Indigenous children is more than twice that figure, at 40%. This report also concluded: "In Canada, Indigenous children are at greater risk than any others. In the case of status First Nations children, at an elevated rate that makes their circumstance wholly unique. There is a demonstrable link between Indigenous child poverty and government policies, policies that have failed. Moreover, this situation is a denial of basic human rights for Indigenous children.The risk to another generation of Indigenous children and to Canada as a whole is clear." (at p. 32)

The *Aboriginal Economic Progress Report 2015* found that since 2006, Indigenous people in Canada have made some gains, but significant gaps remain between the Indigenous and the non-Indigenous population and that "The most striking trend is that First Nations living on reserve had the worst economic outcomes for nearly all indicators."¹⁰

The AFN recently reiterated the vital role that rights implementation must play in closing the socio-economic gap in a document entitled: *Closing the Gap* (Assembly of First Nations 2015).¹¹ *Closing the Gap* sets out some short to medium term priority areas of action where Canada can begin working with First Nations to address the socio-economic gap as well as begin working with First Nations on rights compliance and implementation issues in a strategic and organized way. Notably, since its election on October 19, 2015, the federal government has stated its support for work to close the socio-economic gap; and has stated, as a key priority, taking measures to implement the UN *Declaration on the Rights of Indigenous Peoples*.¹²

⁹ Auditor General of Canada, *2011 June Status Report of the Auditor General of Canada* at para 4.89 at http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html

¹⁰ The National Aboriginal Economic Development Board, *The Aboriginal Economic Progress Report 2015*, Gatineau.

¹¹ Assembly of First Nations, 2015 *Closing the Gap: 2015 Federal Election Priorities for First Nations and Canada* is available on the AFN website at: <http://www.afn.ca/uploads/files/closing-the-gap.pdf>

¹² See Mandate Letter for the Minister of Indigenous Affairs and Northern Development at <http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter>; Statement by Prime Minister Trudeau

Recommendations:

- **Canada be asked to comply with, and effectively implement, all of the State's obligations to Indigenous peoples under the Covenant, in consultation and cooperation with First Nations.**
- **Canada be asked to address the structural inequalities underlying the socio-economic gap by working with First Nations in true partnership to develop a comprehensive plan, that includes implementation of the fundamental economic, social and cultural rights of First Nations.**
- **Canada should work closely with First Nations on appropriate measures to ensure implementation all of the TRC's Calls to Action, beginning with measures to ensure the implementation of the UN Declaration on the Rights of Indigenous Peoples.**
- **In particular, Canada be asked to work with Indigenous peoples through jointly designed engagement processes to identify short, medium and long term actions towards: a) closing the socio-economic gap; b) ensuring full implementation of the *UN Declaration on the Rights of Indigenous Peoples* in partnership and consultation with First Nations; and c) jointly identifying relevant metrics and measurements of progress for closing the gap and implementation of the Declaration.**

Access to Justice Barriers hinder First Nations Access to Legal Remedies (Art 1, 2, 6, 11, 15)

Keys to closing the socio-economic gap are increasing First Nations control of economic and social policy and programming; as well as rights compliance and implementation. The federal government has resisted efforts for meaningful First Nation involvement in program design, and more critically, evaluation. One major impediment to increasing First Nations control over social policy and programming is access to justice on First Nations rights issues, and particularly with respect to control over social and economic outcomes.¹³ Governments in Canada rarely intervene to support Indigenous claimants in cases where litigation involves Indigenous peoples and third parties, and in fact routinely intervene to oppose recognition of Indigenous rights or to argue for restrictive interpretations.

UN Special Rapporteur Anaya notes that according to information provided by the federal government, Treaty rights alone form 25 to 30 per cent of the total number of cases being litigated by the federal government. The Special Rapporteur goes on to note, "There are similar problems with implementation of court judgments affirming aboriginal rights. Poor implementation of existing rights and treaties is hardly a strong motivator for concluding new ones."¹⁴

on Release of the Final Report of the Truth and Reconciliation Commission , December 15, 2015 at <http://pm.gc.ca/eng/news/2015/12/15/statement-prime-minister-release-final-report-truth-and-reconciliation-commission>

¹³ CERD Concluding Observations at at para 21

¹⁴ Anaya Report at para 66.

While statistics on the average length of time of trials in Canada are difficult to acquire, Ontario produced a report suggesting that the average age of claims at the time of disposition in Toronto was about 600 days from 2001 to 2004, and had declined by almost half by 2006.¹⁵ Similarly, in a 2006 speech, the Chief Justice of the Supreme Court of Canada expressed serious concerns regarding access to justice, on the basis that the average number of trial days required to dispose of a civil matter in British Columbia courts had risen to 6 days. The Tsilhqot'in title case spent over 360 days at trial, and resulted in both lengthy and costly appeals.¹⁶

Fisheries are a central source of economic development for First Nations, as a healthy and nutritious food source and as a key cultural resource. Fisheries are central to a number of economic, social and cultural rights and are among the most contested rights in Canada. For example in 2014 the Special Rapporteur noted, “the Nuu-chah-nulth Nation’s litigation over a commercial aboriginal right to fish has taken 12 years, including three years of trial and successive appeals. In the meantime, the Nuu-chah-nulth have been permitted to access very little of the fishery.”¹⁷

Five Nuu-chah-nulth Nations are back in the British Columbia Supreme Court to begin the next phase of the legal process to have their Aboriginal fishing rights implemented. The 2009 Nuu-chah-nulth decision (*Ahousaht et al*) found that the five Nations have Aboriginal rights to fish and sell fish from their territories. The trial decision, subsequently upheld through appeals to the Supreme Court of Canada, also found that the Aboriginal fishing rights of Nuu-chah-nulth Nations have been infringed by the Department of Fisheries and Oceans’ policies and regulations. Canada and Nuu-chah-nulth Nations were provided 2½ years to negotiate a “new fisheries regime”. Over five years later, it seems there is no interest yet on Canada’s part to accommodate the fundamental rights of the Nations.¹⁸ The trial is expected to last for several months. First Nations which win Supreme Court of Canada judgments too often face the same challenges as First Nations who have opted to negotiate – non-implementation. Yet another example is the *Tsilhqot'in Nation* decision by the Supreme Court of Canada, which held that the Tsilhqot'in Nation hold inherent (“Aboriginal”) title. Implementing this decision has proven to be additionally challenging, as is too often the case for other First Nations.¹⁹

¹⁵ The Honourable Chief Justice Warren K. Winkler, Chief Justice of Ontario, Evaluation of Civil Case Management in the Toronto Region A report on the Implementation of Toronto Practice Direction and Rule 78 (2008), online: <http://www.ontariocourts.ca/coa/en/ps/reports/rule78.pdf> (last accessed September 19, 2013) at page 27. This report concluded that “Access to justice is, and continues to be, the challenge for the civil justice system.”, at page 33.

¹⁶ This case was not an anomaly. The *Ahousaht* fishing case, referenced below, took over 100 trial days and subsequently resulted in a number of appeals and a failed court-ordered negotiation process. The issue is now back in court for another trial.

¹⁷ UNSR Report at para 64.

¹⁸ For more information on this particular case, see Uu-a-thluk, online: <http://uuathluk.ca/wordpress/litigation/fishingrights>.

¹⁹ AFN Resolution 67/2010, Implementation of Supreme Court of Canada judgements.

Recommendations:

- **Canada should consult First Nations on ratification of the Optional Protocol to the Covenant as a means to enhance access to justice for First Nations on economic, social and cultural rights.**
- **Canada should work expeditiously and in a non-adversarial manner with First Nations to implement court decisions upholding Indigenous rights and not block access to justice through abusive and unjust procedural motions and appeals.**
- **With First Nations, Canada should review its approach to, and management of, litigation involving First Nations fundamental rights to ensure federal positions are consistent with Canada's constitutional obligations and its human rights obligations and commitments under domestic and international law.**
- **Jointly with Treaty First Nations, Canada should develop Treaty implementation strategies, on a nation-to-nation basis.**
- **Canada should work with First Nations to develop a National Action Plan and other measures to ensure implementation of the *Declaration on the Rights of Indigenous Peoples*.**

Social, Economic and Cultural Rights Negatively Impacted by the Lack of Adequate and Proper Fiscal Arrangements for First Nations

Canadian prosperity is, and always has been, built with First Nations' lands and resources. Yet, First Nations have been subjected to chronic under-funding of essential services; and as a result lack many services that Canadians enjoy like clean drinking water, basic infrastructure and quality, culturally appropriate education for their children and youth.

Canada has well developed system of fiscal transfers and equalization to ensure that the benefits of economic development and tax revenues are shared equitably between various regions within Canada. However, First Nations are not properly incorporated into this intergovernmental system of fiscal transfers and equalization. Despite Canada's control of significant assets and resources, and stated commitment to shared prosperity, First Nations suffer a severe gap in social and economic outcomes compared to other Canadians. The failure of Canada to work with First Nations to put in place adequate and proper fiscal resources and fiscal transfer arrangements is a major contributing factor to the socio-economic gap. (Failure to respect First Nations lands and resource rights and right to self-determination is another as explained above.) The Canadian Centre for Policy Alternatives has observed: "A fundamental transformation of the fiscal relationship between First Nations and the Canadian government is urgently required."²⁰

New fiscal arrangements must be designed specifically for First Nations, and be consistent with the constitutionally-recognized status of First Nations, and the distinct federal fiduciary obligations of the Crown to First Nations. First Nations are not well served by generic 'aboriginal' programs or policies.

²⁰ Canadian Centre for Policy Alternatives, 2015, *Alternative Federal Budget 2015: Delivering the Good* at p. 70.

The 2% Cap on Essential Service Funding

The federal government is primarily responsible to fund First Nation governments, programs and services under section 91(24) of the *Constitution Act, 1867* and other heads of power. The funding that First Nation governments receive from the federal government for essential services such as water, infrastructure and education of children is treated as ‘discretionary’ spending, meaning that budget allocations receive no legal protections.

Compounding the inequity of not having stable, predictable funding arrangements compared to other governments in Canada, is the imposition of an annual 2% cap on funding increases for essential services on reserves. This inequitable funding cap has been in place since 1996 and is less than one-third of the average 6.6% increase that most Canadians have enjoyed for decades under the Canada Health and Social Transfer (CHST).

The 2% funding cap barely keeps up with inflation and makes no adjustments for key factors like First Nations’ booming population growth, the needs that come with population growth or needs arising from the impacts of policies of forced assimilation such as the Indian Residential School system.

By keeping this grossly unfair funding cap in place for twenty years, Canada has imposed a significant structural and fiscal barrier to First Nations capacity to advance their respective social, economic and cultural development priorities. The 2% funding cap is a cap on well-being and growth for First Nations. It also contributes to community infrastructure deteriorating at a faster rate. It is a key factor maintaining unacceptable conditions of poverty for a generation of children and youth. So long as it is maintained, the 2% funding cap will continue to threaten the prospects and future of First Nations children and youth.

The removal of this cap on funding growth, and an adjustment of transfers for need, would reduce the disastrous current rate of poverty for First Nation children. The AFN estimates that if there had not been a 2% cap imposed in 1996, the 2016-17 budget of Indigenous and Northern Affairs Canada (INAC) would have an additional \$3.34 billion in 2016-17. This analysis calculates an annual average escalator of 4.4% since 1996, which accounts for actual inflation and First Nation population growth. Note that this investment assumes that the funding amounts originally imposed in 1996 were accurate. The AFN has calculated that if the appropriate escalators were applied each year, since 1996, there would have been an additional \$25.5 billion invested in First Nation communities. This is why the AFN has called on Canada to work with First Nations to ensure budgets and appropriate funding arrangements are in place for an immediate and front-loaded increase in funding across social and economic program areas. Canada should work with First Nations and immediately end the 2% cap on funding and make an immediate, dramatic and widespread investment in First Nations programs and services.

The AFN notes that in the past, the federal government repeatedly has pointed to the total sums of money it spends on First Nations in key departments such as Indigenous and Northern Affairs and Health Canada (among others.) The AFN cautions against relying on federal spending figures for First Nations as a metric for the socio-economic situation of First Nations or for measuring Canada’s human rights performance.

The funding that First Nations receive for core or essential government services is for services that other Canadians receive from other levels of government such as primary and secondary education (provided by provincial governments) and roads and infrastructure (provided by municipal governments). In fact, when compared to what the average Canadian citizen receives in programs and funding, First Nation government funding lags significantly behind and does not meet actual need in any way that is comparable to the way the needs of Canadians are serviced overall.

Recommendations:

- **That Canada be asked to lift the 2% cap on federal funding to First Nations governments and agencies and work with First Nations to establish a new fiscal relationship, inclusive of new fiscal transfer arrangements with equitable escalators for ongoing funding.**
- **That Canada be asked to restore funding for First Nations representative organizations at all levels – national, provincial/territorial and tribal councils.**
- **That Canada be asked to commit to long-term investments in First Nations water treatment and management systems to ensure universal access to clean water and sanitation.**
- **That Canada be asked to invest in First Nations housing to address the current backlog and demand for new homes and to support First Nations housing management authorities.**
- **That Canada be asked to support and ensure the full involvement of First Nations in emergency prevention, management and mitigation agreements with federal, provincial and territorial governments and support First Nations' roles and capacities to provide these services directly.**
- **That Canada be asked to work with First Nations on the development and implementation of sustainable strategies to facilitate and enhance capacity to engage actively in the economy.**

Contribution Agreements and Funding Issues

UN Special Rapporteur Anaya emphasized the importance of self-government and implementation of rights to improved social and economic outcomes noting, “[b]y all accounts, strengthening indigenous peoples’ self-government is essential to improving their social and economic situation and sustaining healthy communities. A 2011 assessment by the federal Government of the achievements and problems of its self-government policy concluded that self-governing indigenous nations enjoy improved outcomes in educational achievement and employment levels.”²¹

Canada’s preferred method for providing funding to First Nations undermines self-determination and even the pretense of First Nations control over the delivery of programs and services. First Nations financed through ‘Consolidated Funding Arrangements’ are subjected to a myriad of reporting requirements and conditions for receiving funding. There is a lack of clear avenues for appeal if a Minister deems reporting unsatisfactory. In many cases, where a First Nation engages

²¹ UNSR Report at para 38.

in conduct which may be politically embarrassing, the First Nation may be placed in third party management.²² Third party management means the day to day management of a First Nation's finances is placed in the hands of private individual or company appointed by the federal government. They can exercise considerable decision making power over the lives of the First Nations' members including decisions about band membership. There is a lack of clarity about conditions necessary to restore decision-making power to the First Nation government and there is an apparent lack of accountability to First Nations whose funds they are managing and the people serve.

In one case, as a Chief was engaged in protest of housing conditions within her community, her First Nation was placed in Third Party Management. This action by the federal government was subjected to a judicial review. The Court held that a funding arrangement is, "an agreement for the provision of funding for essential services, such as housing, to members of a First Nation living in the isolated and hostile environment of the north. These members live on reserves created by treaty where such services are the life blood of the community."²³ Moreover, "the relationship between the Government and a First Nation is unique While treaty rights are not directly at issue, treaty and Crown relationship plays an underlying role. This situation is one that engages the honour of the Crown."²⁴

An extreme example of the control the federal government exerts over First Nations governments through the use of funding arrangements is the situation of Thunderchild First Nation.²⁵ Thunderchild First Nation objected to several provisions of its funding arrangement with Canada, and refused to sign out of concern it might be bound to those provisions. Although First Nations can generally be only placed in third party management subsequent to a default of the terms of the funding agreement, the Federal Court of Canada accepted the government of Canada's arguments that absence of a signed agreement is itself grounds to place a First Nation in third party management.

This paradoxical decision means that should a First Nation cease to be dependent on federal funding for health and social services programming, the federal government could simply place the First Nation in third party management.

Recommendations:

- **Canada be asked to work with First Nations to reform how First Nations are financed for programs and services.**

²² See *Pikangikum First Nation v. Canada (Minister of Indian and Northern Affairs)*, 2002 FCT 1246 (CanLII), <http://canlii.ca/t/j5n> at para 23. In this case, the community was experiencing a number of suicides, which was attracting considerable media interest.

²³ *Attawapiskat First Nation v. Canada*, 2012 FC 948 (CanLII), <http://canlii.ca/t/fs78f> at para 57. Note that allegations Attawapiskat First Nation was placed in Third Party Management out of retaliation were not pursued by the First Nation.

²⁴ *Attawapiskat* at para.

²⁵ *Thunderchild First Nation v. Canada (Indian Affairs and Northern Development)*, 2015 FC 200 (CanLII), <http://canlii.ca/t/gghhj>.

- Canada be asked to work with First Nations on developing meaningful monitoring and evaluation frameworks which respect First Nations jurisdiction, involve service recipients and service providers and result in changes to programs and service delivery methods²⁶
- Canada should work jointly with First Nations to ensure that monitoring, evaluation and other accountability measures for consolidated funding arrangements are based on clearly criteria linked to program performance.
- Canada should work with First Nations to ensure that federal policies and programs pertaining to economic, social and cultural programming in First Nations explicitly recognizes the role of such programming in fulfillment of treaty rights, the Honour of the Crown, and Canada's international human rights obligations and ensures that the federal role in delivery of such programming is consistent with these rights protections.

Discriminatory practices by Canada respecting Child Welfare Services for First Nations Children on Reserve and in the Yukon (Articles 1,10,11,12)

As a result of the particular colonial and constitutional history of Canada, First Nations as peoples and nations, have a distinct relationship with the Crown, and especially the Crown as represented by the federal government. This distinct relationship may give rise to fiduciary and other legal duties which have been recognized in numerous court decisions, and most recently in the long awaited decision of the Canadian Human Rights Tribunal (*Assembly of First Nations, First Nations Child and Family Services Caring Society, Canadian Human Rights Commission v. Canada*).²⁷ In this case, the Tribunal found that Canada's decision-making respecting child welfare, and in particular its approach to funding child welfare services on reserves, was discriminatory within the meaning of the *Canadian Human Rights Act*. The Tribunal found that the federal government's decisions respecting funding levels and various funding arrangements has been, and is, discriminatory on grounds of race, ethnic or national origin in its impacts on First Nations children.

The Tribunal held that Canada's design, management and control of the FNCFS Program, along with its corresponding funding formulas have resulted in denials of services and created various adverse impacts for many First Nations children and families living on reserves. Specific legal interests of First Nations that are adversely impacted by Canada's discretion and control over the FNCFS Program are indigenous cultures and languages, because transmission is severed from one generation to the other. The Tribunal also found that, while provincial standards dictate that

²⁶ For example, by adopting the seven principles articulated by the Auditor General of Canada. See, 2006 May Status Report of the Auditor General, online: http://www.oag-bvg.gc.ca/internet/English/parl_oag_200605_05_e_14962.html. On the last point, at para 5.60 the report explains "In many of the areas we examined in this audit, Indian and Northern Affairs Canada relates to First Nations in several different roles, sometimes at cross-purposes with one another. Senior government officials told us that they recognize that there is at least the appearance of conflict in the many roles that the Department is required to fulfill."

²⁷ <http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/127700/index.do?r=AAAAAQB9QXNzZW1ibHkgb2YgRmlyc3QgTmF0aW9ucywgRmlyc3QgTmF0aW9ucyBDaGlsZCBhbmQgRmFtaWx5IFNlcnZpY2VzIENhcmluZyBTb2NpZXR5LlCBdYW5hZGlhbiBIdW1hbiBSaWdodHMgQ29tbWlzc2lvbiB2LiBDYW5hZGEB>

all alternative measures should be explored before bringing a child into care, Canada's funding formulas for First Nations child welfare agencies provide an incentive to remove children from their homes as a first resort rather than as a last resort.

The Tribunal found that these discriminatory funding practices and decisions have compounded the harms and perpetuated the historical disadvantage and trauma experienced by First Nations families and communities flowing from the federal government's imposition of Indian Residential Schools. With its co-complainant in this case (the First Nations Child and Family Services Caring Society) the AFN has asked for a range of remedies which include compensation to the children harmed by the discrimination as well as provision of appropriate funding levels and fiscal arrangements for First Nations child welfare agencies. Non-discriminatory funding levels, funding formulas and fiscal arrangements are all required to ensure that First Nations child welfare agencies have the capacity to deliver services meeting the human rights standard of substantive equality - a concept the Tribunal found necessarily includes the capacity to deliver culturally appropriate services. The AFN and its co-complainant have asked the Tribunal for an order requiring Canada to cease the discriminatory practices and to work with First Nations to identify the measures needed to remedy the discrimination and its impacts. At the time of writing this submission, the Tribunal has not yet made a determination on the remedies necessary to address the discriminatory practices identified.

On a final note relevant to access to justice problems for First Nations, the AFN and the First Nations Child and Family Services Caring Society (with the help of the Canadian Human Rights Commission) had to struggle seven long years against the federal government to have this case even heard by the Canadian Human Rights Tribunal. The case first launched in 2007 was eventually heard in the fall of 2014 after numerous attempts by Canada to block it with procedural motions and court challenges. The decision vindicating the positions of the AFN and the First Nations Child and Family Services Caring Society was rendered in January 2016.

Denial of critical treatments and services to First Nations Children- Jordan's Principle (Article 1,7,10)

A key challenge to delivering vital services to First Nations children is jurisdictional disagreements between provinces/territories and the federal government. Even within the federal government itself, different departments often disagree about who is responsible for providing certain services to First Nations. One way that First Nations have tried to remedy this inequity is through the development of Jordan's Principle. The Principle provides that no child should be denied critical services due to jurisdictional disputes between governments.

Jordan's Principle is a child-first principle and provides that where a government service is available to all other children and a jurisdictional dispute arises between Canada and a province/territory, or between departments in the same government, the government department of first contact pays for the service and can seek reimbursement from the other government/department after the child has received the service. It is meant to prevent First Nations children from being denied essential public services or experiencing delays in receiving them. The Principle provides that no child should be denied critical services due to jurisdictional disputes between governments.

Despite unanimous endorsement of Jordan’s Principle by the House of Commons, jurisdictional ambiguity and intergovernmental/interdepartmental disagreements continue to result in inequitable care for First Nations children. The Canadian Human Rights Tribunal²⁸ recently noted that Health Canada’s and Aboriginal Affairs and Northern Development Canada’s narrow interpretation of Jordan’s Principle results in there being no cases meeting the criteria for Jordan’s Principle. Canada’s interpretation does not address the extent to which jurisdictional gaps may occur in the provision of many services needed to support the health, safety and well-being of First Nations children and families. The Tribunal found that “such an approach defeats the purpose of Jordan’s Principle and results in service gaps, delays and denials for First Nations children on reserve”.

Recommendations:

- **Canada should develop and implement a governmental response that is consistent with the vision of Jordan’s Principle advanced by First Nations and endorsed by Canada’s House of Commons.**
- **Canada should systematically identify and address the jurisdictional ambiguities and underfunding that give rise to each Jordan’s Principle case. By clarifying jurisdictional responsibilities and eliminating the underfunding identified in individual cases, governments can prevent denials, delays, and disruptions in services for other children in similar circumstances. Accordingly, they can better assume the responsibilities to ensure equitable treatment of First Nations children outlined in the Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples, the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and other federal, provincial/territorial, and First Nations legislation and agreements.²⁹**
- **Jordan’s Principle - in the fulsome definition advanced by First Nations and endorsed by the House of Commons - should be expanded to include First Nations adults.**

Violence, the National Crisis of Missing and Murdered Indigenous Women and Girls (Article 3)

Canada recently has taken some preliminary action in response to the national crisis of missing and murdered Indigenous women and girls - such as attending high level inter-governmental meetings with Indigenous peoples’ representatives to develop a national action plan; and taking first steps towards establishing a national inquiry into the matter.

However, the specific policy and operational actions required to address the unacceptable risk factors imposed on Indigenous women are very much rooted in structural inequalities, systemic

²⁸ First Nations Child and Caring Society v Attorney General of Canada, 2016 CHRT 2 at para 381.

²⁹ The Jordan’s Principle Working Group (2015) *Without denial, delay, or disruption: Ensuring First Nations children’s access to equitable services through Jordan’s Principle*. Ottawa, ON: Assembly of First Nations: pg. 6.

discrimination and various forms of blatant discrimination. The 2014 Report of the Inter-American Commission on Human Rights (IACHR) entitled *Missing and Murdered Indigenous Women in British Columbia, Canada* identifies factors that have contributed to high rates of missing and murdered women in BC as well as across Canada. The report makes clear that the vulnerability and the extensive victimization of Indigenous women and girls is rooted in the complex effects of colonization, the federal *Indian Act*, the legacy of Indian Residential schools and ongoing institutional and structural inequalities.

The IACHR concluded that efforts to address violence against Indigenous women and girls risk falling short unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed: “The IACHR stresses the importance of applying a comprehensive holistic approach to violence against indigenous women. This means addressing the past and present institutional and structural inequalities confronted by indigenous women in Canada. This includes the dispossession of indigenous lands, as well as historical laws and policies that negatively affected indigenous people, the consequences of which continue to prevent their full enjoyment of their civil, political, economic, social and cultural rights. This in turn entails addressing the persistence of longstanding social and economic marginalization through effective measures to combat poverty, improve education and employment, guarantee adequate housing and address the disproportionate application of criminal law against indigenous people. These measures must incorporate the provision of information and assistance to ensure that indigenous women have effective access to legal remedies in relation to custody matters. Specifically regarding Prince George, the IACHR urges the Canadian State to immediately provide a safe public transport option along Highway 16. “(para 306)

In a 2015 report, the UN Committee on the Elimination of Discrimination against Women similarly expressed concern that Canada’s failure to take appropriate measures to address the root causes of Indigenous peoples’ poverty underlies the missing and murdered Indigenous women crisis.³⁰

The AFN also submits that measures by governments in Canada to address violence against Indigenous women and girls must include an examination of the role, behaviours and attitudes of police forces in Canada. In addition to a 2013 report by Human Rights Watch,³¹ the AFN wishes to bring to the Committee’s attention disturbing revelations arising from a media investigation (by the television program "Enquête") of cases of abuse of power and of violence against Indigenous women by law enforcement officials in Québec.³² The Assembly of First Nations Québec-Labrador (AFNQL) has called on the Government of Quebec to establish an Independent Commission of Inquiry to examine how justice is applied to First Nations in order to examine this and other pressing justice issues in Québec.

³⁰ Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

³¹ Human Rights Watch, 2013. *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*

³² <http://ici.radio-canada.ca/tele/enquete/2015-2016/episodes/360817/femmes-autochtones-surete-du-quebec-sq>

Recommendations:

- **That in addition to the current measures being undertaken, Canada be asked to engage in a collaborative process to develop, with First Nations, a National Action Plan to address the root causes of violence experienced by First Nations women and girls in Canada.**
- **That Canada move as expeditiously as possible in consultation with Indigenous peoples to implement the federal government’s commitment to launch a national inquiry into Missing and Murdered Indigenous Women and Girls in consultation with Indigenous peoples.**
- **That all governments in Canada, in consultation with First Nations, take meaningful and expedient action to exercise due diligence, address discrimination and deliver substantive equality in addressing violence against Indigenous women and girls, including addressing violence and abuse experienced at the hands of police forces.**

The First Nations Housing and Infrastructure Crisis (Articles 1, 2, 7, 11)

Housing and infrastructure including the vital link of winter roads in northern regions are very critical needs for First Nations in Canada. Lack of adequate housing and infrastructure contributes to unacceptably poor health outcomes, overcrowding, mold, lack of facilities for water and sanitation, loss of self-esteem for children, and loss of economic opportunities.

The rate of population growth of First Nations people, on and off reserve, has placed enormous pressure on leadership to put more houses on the ground in reserve lands. Not being able to address these demands, reserve communities are losing members as they move to urban areas to seek housing. This out-migration only serves to increase urban social issues such as homelessness, development of chronic and communicable diseases, loss of language, substance abuse, family breakdown and disassociation from families. There is a need for a massive injection of funds for First Nation housing for new construction, renovation, addressing mold, relieving overcrowding and the required lot servicing. The Auditor General of Canada found that “no federal organization has taken responsibility for assessing the extent of the [housing] problem and developing a comprehensive strategy for addressing it”.³³

Recommendations:

- **That Canada identifies relevant federal departments and programs and instruct them to work with First Nations to develop a coordinated and comprehensive First Nations housing strategy.**
- **That Canada develops a plan, with the full and effective participation of First Nations, to connect remote First Nations communities to the rest of Canada via all season roads.**

A recent study commissioned by INAC using Registered Indian Household Estimates (2010-2031) found that during the 2010-2034 time period, the incremental housing requirements of Registered Indian households on reserve are estimated to include:

³³ Auditor General 2006 at para 5.36.

- 130,197 new units to accommodate household and family growth;
- 11,855 new units to replace units which are lost to the stock or deteriorate to the point where they cannot be economically renovated; and
- the renovation of an additional 8,261 to 10,861 existing dwelling units which are forecast to require major repairs during the period.³⁴

Parsing this number over 25 years suggests that 5,682 new units are needed per year. The study calculated that estimates of the capital investment (in 2009 dollars) needed to address the future housing needs of Registered Indian households on reserve range between \$23.6 billion, including about \$21.2 billion in new housing construction to accommodate projected household and family growth, about \$2.1 billion to replace units which deteriorate or are lost to the stock and between \$226.3 and \$282.9 million in incremental renovation investment to maintain the existing stock.

Recommendation:

- **Canada should immediately develop a plan to address the current shortage of adequate housing among First Nations.**

Internally Displaced Persons

Each year, First Nations persons, households and even entire communities are displaced as a result of fires, flooding or other extreme events. Every year, hundreds, if not thousands, of First Nations households are displaced due to wildfires or flooding. The economic and social services provided to First Nations evacuees is substantially worse than similar services offered to evacuees of non-native communities. Moreover, some First Nations households have been under evacuation orders for years, as opposed to days or weeks.³⁵ One such example relates to Lake St. Martin First Nation. In the spring of, 2011, the Province of Manitoba experienced a major flood. To protect the City of Winnipeg and other major centres in southern Manitoba, the Province of Manitoba used the Fairford River Water Control Structure to divert water from the Assiniboine and Red Rivers into Lake Winnipeg. This raised the water level of the Lake and resulted in extensive flooding of the First Nations of Lake St. Martin, Little Saskatchewan, Dauphin River and Pinaymootang (Fairford). The residents of Lake St. Martin First Nation were evacuated from their community in May, 2011 and remain evacuated to this date.

Failure to return evacuees to their home communities in a timely fashion has a variety of serious impacts on economic, social and cultural rights. For example, an audit prepared for the government of Canada recognized that, “A major theme that emerged from the needs assessment was the loss of community. This is especially an issue in rural First Nations communities, where kinship ties remain strong. Separation from family and friends, the inability to exercise their culture, the loss of belief systems, the devastation wrought on the natural landscape, and the lack

³⁴ Stewart Clatworthy, *Aboriginal Housing Conditions and Needs on Reserve*, (Four Directions Consultants, 2012).

³⁵ CBC News, “1,903 Manitobans still displaced from homes, 3 years on”, 26 April 2014, online: <http://www.cbc.ca/news/canada/manitoba/1-903-manitobans-still-displaced-from-homes-3-years-on-1.2622791>

of contact with their traditional lands — these were all potent issues to the people who suffered from them.”³⁶

Recommendations:

- **That Canada provide immediate information on the number and socio-economic conditions of First Nations persons displaced as a result of fires or flooding and provide plans with timelines to return them to their communities.**
- **That Canada immediately invest in improved infrastructure and emergency services for First Nations communities to reduce the need for protracted evacuations**
- **That Canada work with First Nations to develop service standards to be applied when First Nations are evacuated from their communities due to fires or flooding**

First Nations Persons with Disabilities face multiple forms of marginalization (Articles 1, 2, 7, 11)

Canada has a number of responsibilities specific to First Nations for implementing its obligations under the Convention on the Rights of Persons with Disabilities (CRPD/Convention). First Nations persons with disabilities (FNPWD) continue to face a disproportionate amount of disability and injury, according to the *Regional Health Survey (RHS) 2008-10 –Adult Survey, Chapter 14: Injury and Disability*.

There are numerous reasons why First Nations people face higher risks of injury and disability compared to the general Canadian population. Identifying the causes of health inequities for First Nations through a robust Social Determinants of Health (DoH) lens is fundamental. First Nations persons continue to suffer disproportionately through impoverishment, poor health, and lack of access to care and an ever widening injury and disability gap. Further, an overwhelming number of FNPWD are girls and women and are multiply disadvantaged by poverty, gender, racism, sexism and disability.

The AFN is developing a process to raise awareness and create opportunities for FNPWD to contribute to their own economic, social and human rights by fully and meaningfully contributing to Canada’s initial report under the Convention. AFN Resolution 48/2014, *Support for Persons with Disabilities* directs the AFN to call for greater participation of First Nations in this important process as articulated in Article 33(3) of the Convention: the State must also designate bodies and mechanisms for the implementation of the CRPD and for monitoring the CRPD’s implementation. Article 33(3) also requires that persons with disabilities, and their organizations and civil society, be “involved and participate fully in the monitoring process.”

Recommendation:

- **That Canada develops a process to involve First Nations persons with disabilities in all aspects of the monitoring process under the CRPD.**

³⁶ Indigenous and Northern Affairs Canada, *Manitoba Floods 2011 First Nations Recovery Needs Assessment*:online at <https://www.aadnc-aandc.gc.ca/eng/1387391495840/1387392049811>.

- **Many FNPWD residing on reserves and or in remote communities must leave their families in order to access services in urban centres. Given the lack of access to basic services on reserves, inaccessible buildings, or independent housing, FNPWD are frequently isolated from family and community and often find themselves in foreign, hostile and often insensitive urban environments.**
- **Canada and First Nations work jointly to solve the jurisdictional barriers to FNPWD access to basic services.**
- **Canada, with the full and effective participation of First Nations, should regularly assess the need and effectiveness of First Nations disability programs in partnership with First Nations.**
- **Working jointly with First Nations persons with disabilities, First Nations institutions and First Nations, Canada should enhance data and surveillance to sufficiently address/ assess the needs of First Nations persons with disabilities.**
- **In addition, Canada should mobilize adequate resources to enable capacity, evidence and analysis development and other requirements to adequately comment on Canada’s initial report on CRPD; and, the future work on disabilities and First Nations.**
- **Call on the government to increase programs/investments for disability/ injury prevention as no major initiatives for First Nations were made available since 2007.**
- **Call for government investments in First Nations injury prevention / disability research since there have been no major investments since 2007.**

The First Nations Health Gap (Articles 1, 2, 12)

Health Canada’s First Nations and Inuit Health Branch (FNIHB) stated mandate is:³⁷

- To ensure the availability of, or access to, health services for First Nations and Inuit communities;
- To assist First Nations and Inuit communities address health barriers, disease threats and attain health levels comparable to other Canadians living in similar locations; and, build strong partnerships with First Nations and Inuit to improve the health system.’

The UN *Declaration the Rights of Indigenous Peoples* provides in Article 24(2) that “Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.”

The reality of life today for First Nations in Canada reveals a wide gap in health outcomes compared to other Canadians:

- The life expectancy of First Nations persons is 5 years less than that of other Canadians and the quality of life for First Nations peoples is generally much lower.

³⁷ Health Canada, First Nations and Inuit Health Branch, “About Health Canada,” <<http://www.hc-sc.gc.ca/ahc-asc/branch-dirgen/fnihb-dgspni/mandat-eng.php>> (accessed July 7, 2014).

- The suicide rate among First Nations persons is between 4 and 5 times higher than that of the general population.³⁸
- AFN estimates that the incidence of type 2 diabetes is about 4 times higher for First Nations persons than for other Canadians.
- While Indigenous peoples represent approximately 4% of the population, they represent approximately 12% of new HIV infections.
- Two regional studies (in British Columbia and Manitoba) show the infant mortality rate among “Registered” First Nations to be approximately twice that of the general regional population.

Further, First Nations persons are at much higher risk of dying prematurely and from avoidable causes – a disparity that is highest among women and younger adults.³⁹ This risk greatly diminishes when controlled for education and income.

The AFN submits that the current programs and services available to First Nations through Health Canada’s First Nations and Inuit Health Branch (FNIHB) are clearly failing to produce health outcomes for First Nations people that are consistent with Canada’s human rights obligations.

The way forward for First Nations Health Programming

The AFN encourages Canada to pursue a new relationship with First Nations; one which treats First Nations as equal partners and experts in their own health and wellness, as opposed to the paternalistic relationship that has historically characterized federal/First Nations relations. Part of this new relationship includes a reimagining of FNIHB transfers to First Nations overall. While there are some notable exceptions that should be examined for lessons learned, current practice tends towards short term project-based funding based on priorities and timelines determined, in large part, by FNIHB. This type of funding severely limits the ability of First Nations communities to engage in long-term strategic planning based on community driven priorities.

While a nation-to-nation model will look very different across the country, fundamentally what is required is a commitment to long term sustainable and flexible funding matched to population growth, health needs and cost drivers. This must also include adequate funding for core community health programming and administrative support. Increases in funding must be focused on funding for First Nations through grants and contributions rather than funding for FNIHB operations and management. Finally, the increased responsibility for First Nations health

³⁸ In aggregate. However, further disaggregation of the data reveals even more disturbing trends. For example in the Sioux Lookout Zone in Ontario, the suicide rate for children (aged under 15) is 50 times the national average. The suicide rate for those between the ages of 25-44 is merely 5 times the national rate. See DRPA Canada, *North West Local Health Integration Network, Aboriginal Health Programs and Services Analysis and Strategies*, online: <file:///Users/WilliamDavid/Dropbox/Downloads/NW%20LHIN%20Aboriginal%20Health%20Programs%20and%20Services%20Analysis%20and%20Strategy.pdf> at page 25. It remains unclear to the AFN whether this finding resulted in any meaningful change in government programming or policy; however the problem appears to be worsening.

³⁹ Park, J., M. Tjepkema, N. Goedhuis, and J. Pennock, 2015. Avoidable mortality among First Nations adults in Canada: A cohort analysis.

programs and services must also come with increased authority over those programs and services, rather than simply an administrative function.

Recommendations:

- **Canada should work with First Nations to develop a new funding model which demonstrates a commitment to long term sustainable and flexible funding matched to population growth, health needs and cost drivers.**
- **Canada should develop a new model for funding programs and services which recognizes First Nations self-determination over delivery of those programs and services.**

Health Care Innovation

The government of Canada has committed to “develop a pan-Canadian collaboration on health innovation.” The AFN contributed to the July 2015 report from the Advisory Panel on Healthcare Innovation entitled, “Unleashing Innovation: Excellent Healthcare for Canada.” The report noted: *“Nowhere are the impacts of a fragmented and disjointed healthcare system more keenly felt than with many of Canada’s First Nations.”*

Recommendation:

- **Canada should implement all First Nations recommendations to Canada’s Advisory Panel on Healthcare Innovation, including the recommendation to: “facilitate the transfer of federal healthcare delivery programs to interested First Nations communities, working in partnership with First Nations leadership in those communities and the relevant province or territory, while ensuring that service transfers are accompanied by commensurate resources.”⁴⁰**

Non-Insured Health Benefits

Since the spring of 2014, the Assembly of First Nations (AFN) and the First Nations and Inuit Health Branch (FNIHB) have been conducting a comprehensive Joint Review of the Non-Insured Health Benefits (NIHB) Program. Within this multiyear process, the Joint Review will investigate and examine each of the NIHB benefit areas with the objective of:

- Enhancing client access to benefits;
- Identifying and addressing gaps in benefits;
- Streamlining service delivery to be more responsive to client needs; and
- Increasing Program efficiencies.

The review of the Short Term Crisis Intervention Mental Wellness Counselling (STCIMWC) benefit report is at the approval stages and ground work is being laid for subsequent benefits set to begin late this calendar year. The AFN seeks Canada’s continued commitment through FNIHB to work on making NIHB program changes within this longer term project. Further, the AFN requests an ongoing commitment to work together with Canada on the full implementation of shared recommendations that come from the NIHB Joint Review Steering Committee table.

⁴⁰ Advisory Panel on Healthcare Innovation, “Unleashing Innovation: Excellent Healthcare for Canada,” (July, 2015): pg. 67.

Oral Health

Compared to the general Canadian population, First Nations are less likely to access dental services. On a per capita basis, dental costs are 55% of what the Canadian population spends on dental services. The introduction of the Children's Oral Health Initiative (COHI) to supplement Primary Health Care and Public Health (PHCPH) dental providers in First Nations communities has increased access by children to dental hygiene and oral health promotion services, and raised the percentage of 0-4 year old children who have caries free teeth. However, the severity of need remains as over one quarter of children less than five years old who receive services from PHCPD dental providers had eight or more decayed teeth in 2008/09. Early childhood caries is a serious health issue among First Nations children, and has been estimated in this report to cost over \$16 million annually to federal, provincial and territorial health systems.⁴¹

Recommendation:

- **Canada should work with First Nations on a First Nations-driven approach to design, evaluate and implement changes to the Non-Insured Health Benefits Program.**

Home and Community Care

The growing elderly First Nations population is an emerging priority area for health action for the AFN and we seek ongoing improvement of Home and Community Care (HCC) and palliative care. Increasing numbers of First Nations persons are requesting support to die in their home communities, but resources are scarce. No one (and especially no residential school survivors) should feel re-victimized at the end of life because end-of-life care services are only available in urban centres, far from home and family members. This requires resources for both HCC and Assisted Living, to address the shortage of supportive living environments on-reserve. In addition, the population numbers used within the funding formula to determine funding levels for the FNIHB HCC program have not been updated since 1997.

Recommendations:

- **The population numbers used within the Home and Community Care funding formula be immediately updated to reflect the current population figures, that program dollars reflect this update and the demonstrated need of First Nations.**
- **Canada should immediately support a First Nations –led review of the Home and Community Care Program in order to identify the impacts of insufficient funding at the community level and the investments required to make up for years of underfunding.**

Mental Wellness

A tragic suicide pandemic faces many First Nations. Between 2009 and 2011 for example, the people of Mushkegowuk experienced one of the most difficult situations they have ever faced. Suicide was taking hold of First Nation communities and taking the lives of many. It was estimated that over 600 children and youth thought about taking, or tried to, their own life, and

⁴¹ Teeth for Life, First Nations Oral Health Strategy: <http://oralhealth.circumpolarhealth.org/files/2009/07/FNOHS-Teeth-for-Life-15-Oct-10.pdf>

tragically many committed suicide. In response, a state of emergency was declared, and following numerous failed attempts for governmental support, Mushkegowuk made the decision to take full control and responsibility of the situation by designing their own process for a public inquiry. Mushkegowuk Council Grand Chief, Jonathan Solomon stated; “The Mushkegowuk were forced to take the situation into our own hands; we didn’t want to see any more of our family members and children die. The people sourced their own funding to conduct the inquiry and started an in-depth review of ourselves, by ourselves.” On January 20th, 2016, the Mushkegowuk Council called on all levels of Government, First Nations, community members, and agencies, to implement recommendations made public in a report titled “The People’s Inquiry Into Our Suicide Pandemic.” This follows two years of public hearings and the documentation of personal stories and identifying possible solutions to address the suicide pandemic crippling the region. *Mushkegowuk Council Releases Findings from “The People’s Inquiry Into Our Suicide Pandemic. States: “Nobody Wants to Die. They Want the Pain to Stop.” January 20, 2016.*

In 2015 in Maliseet First Nation territory in New Brunswick, twelve suicide deaths occurred within a population of fewer than 4,000 people. Tragically, nine of those deaths related specifically to individuals and families of First Nations persons with disabilities. Getting to the core of this issue is paramount and requires a more comprehensive, coordinated and collaborative approach to understanding the linkages to disabilities and suicides.

The National Aboriginal Youth Suicide Prevention Strategy (NAYSPS) aims to increase protective factors (e.g., youth leadership) and decrease risk factors (e.g., loss of traditional culture) related to Aboriginal youth suicide in First Nations communities. Program objectives include increasing community capacity to prevent and deal with youth suicide, enhancing community understanding of effective suicide prevention strategies, and supporting community efforts to reach youth. NAYSPS supports between 115 to 150 youth suicide prevention projects annually. The types of projects undertaken include suicide awareness raising events, leadership and life skills development courses, cultural activities that incorporate traditional practices, elder mentorship opportunities for youth, and postvention activities such as grief and loss workshops.

Suicide rates among First Nations are much higher than those of the general population and youth suicide rates are increasing. First Nations youth and adults experience higher suicide rates than the Canadian population overall. During the period from 2000-02 to 2005-07, the suicide rates for youth aged 1-19 years living in areas with a high First Nations population increased by 13% for males and 43% for females, while suicide rates in low First Nations populated areas decreased by 24% for males and did not change for females (.09%). Between 2005 and 2007, the suicide rate among youth aged 1 to 19 living in areas with a high First Nations population was 11 times higher for males and 21 times higher for females as compared to youth aged 1 to 19 living in areas with a low First Nations population (Peters, Oliver, & Kohen, 2013)⁴².

⁴² Peters, P.A., Oliver, L.N., & Kohen, D.E. (2013). Mortality among children and youth in high-percentage First Nations identity areas, 2000-2002 and 2005-2007. http://www.rrh.org.au/publishedarticles/article_print_2424.pdf

The federal government has committed to work with provincial and federal governments to make high-quality mental health services more available to Canadians who need them. This commitment must also include First Nations. Focusing on and enhancing mental wellness requires a shift away from fragmented programming towards a comprehensive wellness system for First Nations that is grounded in First Nations cultures and in an evidence-based continuum of care. This must involve the entire spectrum of health determinants.

The First Nations Mental Wellness Continuum Framework (FNMWCF) is the result of a coming together of the AFN, FNIHB and Indigenous mental wellness experts. The Framework supports a shift away from fragmented programming toward a comprehensive mental wellness system for First Nations that is grounded on an evidence-based continuum of care. It provides guidance for system level changes in the short, medium, and long term that are grounded in First Nations community priorities and informed by regional, provincial, territorial, and federal government priorities.

In 2015-2016, with guidance from a FNMWCF Implementation Team, the Mental Wellness Division at FNIHB and Governance Programs at Aboriginal Affairs and Northern Development Canada- now Indigenous and Northern Affairs Canada- each allocated \$175K to FNMWCF implementation projects for a total investment of only \$350K (for over 630 First Nations communities).

The tragic 2008 death of Brian Sinclair, a First Nation man and double amputee, from a treatable bladder infection after sitting in his wheelchair for 34 hours in a hospital waiting room in Winnipeg remains a cause of great concern. An inquest report did not address the issue of negative stereotyping of Indigenous people.

Recommendations:

- **Canada, with the full and effective participation of First Nations, should regularly assess the need and effectiveness of First Nations disability programs in partnership with First Nations. Working jointly with First Nations persons with disabilities, First Nations institutions and First Nations, Canada should enhance data and surveillance to sufficiently address/ assess the needs of First Nations persons with disabilities. In addition, Canada should mobilize adequate resources to enable capacity, evidence and analysis development and other requirements to adequately comment on Canada's initial report on CRPD; and, the future work on disabilities and First Nations.**
- **Canada should provide adequate, sustainable, flexible funding to ensure the implementation of a coordinated and comprehensive approach to mental health and addictions programs and services to continue and expand upon the work of the First Nations Mental Wellness Continuum Framework (FNMWCF).**
- **Increased First Nations community ownership and capacity to stem suicides, and other mental health issues; enhancing community understanding of effective suicide prevention strategies; supporting community efforts to reach youth; and integration of community culture and traditions in the delivery of suicide programming.**
- **Call on all levels of government, First Nations, community members, and agencies, to implement recommendations made public in a report titled "The People's**

Inquiry Into Our Suicide Pandemic” made public on January 20th, 2016, by the Mushkegowuk Council.

- **Call on Canada to support the ongoing work of the Sinclair Expert Working Group on a Brian Sinclair Alternative Inquest Report (that is scheduled to be released in the spring of 2016) and to look for opportunities to apply the lessons learned from Brian Sinclair’s tragic death to Canada’s role as a health provider to First Nations individuals.**

Culture and Traditional Healing

An important innovation required to fully meet First Nations health needs is for all health systems in Canada to respect and support the use of cultural practices and traditional healing for First Nations people. The recognition of this need is reflected in the TRC Call to Action #22 which states: “We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients.”

This is a principle that can certainly be part of the renewed negotiations of a Health Accord, thus supporting its implementation in provincial/territorial health systems. In addition, there are numerous opportunities within FNIHB programming to support First Nations healing practices. The benefits of allowing for flexibility in programming to allow for traditional healing is evident in the success of the Indian Residential School Resolution Health Support Program (IRS RHSP) which, in part, provides resources for cultural supports in the form of traditional healers and Elders to residential school survivors and their families. While this program is set to sunset in 2016, there exists a clear option to maintain this support for traditional healing through innovation to the Non-Insured Health Benefits (NIHB) program’s Short Term Crisis Intervention Mental Health Counselling (STCIMHWC) benefit. This is only one example where FNIHB can support First Nations communities in ensuring support for First Nations healing practices.

Recommendations:

- **Canada should develop new programming to provide cultural supports in the form of traditional healers after the sunset of the IRS RHSP**
- **Canada should enhance support for traditional healing in all health programming.**

First Nations Children & Youth

According to UNICEF’s 2009 report, “Aboriginal children’s health: Leaving no child behind”⁴³, stated: “Twenty years after the Convention on the Rights of the Child was adopted with the promise of providing the best we have to give as a nation for all our children, the health conditions of Canada’s Aboriginal children are not what we would expect in one of the most affluent countries in the world. Such disparity is one of the most significant children’s rights challenges Canada must address”.

⁴³ UNICEF: “Canadian Supplement to the State of the World’s Children 2009: Aboriginal Children’s Health: Leaving no child behind” on line at: <http://www.nccah.ca/docs/child%20and%20youth/Report%20Summary%20Leaving%20no%20child%20behind.pdf>

Investment in the data collection of maternal and child health statistics is limited and underfunded; however, any future investments in data collection requires the fundamental need to honour the Ownership, Control, Access and Possession (OCAP)⁴⁴ principles. Moreover, Canada continues to have higher infant mortality rates approximately twice the Canadian average, and lower immunization rates than the rest of Canada. First Nations babies are more likely to die from Sudden Infant Death Syndrome (SIDS). Immunization rates are well below targets, and in fact, may be 20% lower than the rest of the Canada. For many First Nations families, the maternal bond between parent and child has been severed through the intergenerational effects of residential schools.

A study released in June 2013 by the Canadian Centre for Policy Alternatives and Save the Children Canada⁴⁵ found that the poverty rate of First Nations children living on reserves was triple that of non-Indigenous children. 50% of First Nations children live below the poverty line. Extreme poverty, reduced access to clean water, and poor sanitation systems are issues which continue to impact greatly on the health and wellbeing of First Nations children and youth in Canada.

There is a federally funded Maternal Child Health (MCH) program, which supports pregnant women and families with infants and young children which has great potential; however, it is not a universally funded program. Similarly, the Aboriginal Head Start On-Reserve (AHSOR) Program funds activities that support early childhood intervention strategies which support the health and developmental needs of First Nations children from birth to age six, and their families. It also promotes strong parental involvement and unique culture and language components. It has proven again and again that it is having a positive impact in the early development and improving later outcomes for First Nations children and youth. However, the program has yet to expand to include more centre-based programs within communities.

Recommendations:

- Programs having significant impacts such as AHSOR Program and the MCH Program require universality and more First Nations communities require access to a centre-based AHSOR program.
- In honouring Ownership, Control, Access and Possession (OCAP) principles, there is a need for more investment into high quality data pertaining to First Nations maternal and child health.
- Addressing the social determinants of health must be at the forefront in a coordinated approach with First Nations and all levels of government in order to adequately have an impact on First Nations maternal and child health related issues.

⁴⁴ First Nations Information Governance Centre: O.C.A.P. online at:
http://fnigc.ca/sites/default/files/docs/ocap_path_to_fn_information_governance_en_final.pdf

⁴⁵ David Macdonald and Daniel Wilson, "Poverty or Prosperity: Indigenous Children in Canada": Canadian Centre for Policy Alternatives. Save the Children. June 2013 online at:
https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2013/06/Poverty_or_Prosperity_Indigenous_Children.pdf

The Growing Obesity Epidemic

First Nations are the youngest, fastest growing population in Canada. Subsequently, there is a need to support First Nations in addressing the obesity epidemic and obesity related comorbidities; and in particular the need for health prevention, physical activity promotion, partnerships and healthy lifestyles. Obesity is associated with health problems including hypertension, diabetes, hyperlipidemia and metabolic syndrome and linked to a variety of chronic diseases such as type 2 diabetes and cardiovascular disease. Finding the path to healthier weights involves identifying effective health promotion strategies specific for First Nations children. Physical activity is known to have many benefits including lowering the risk of some cancers, cardiovascular disease and diabetes. Physical activity has also been identified as a predictor of obesity in youth with the likelihood of being obese greater in people who are physically inactive. Yet according to the Regional Health Survey, just under one third of children 6-11 years of age are considered inactive with a significantly greater proportion of 6-8 year olds considered inactive compared to their older 9-11 year old peer group. For many of these inactive children, being also part of a peer group of children who are heaviest will mean that a significant number of them will go on to be heavy adults.⁴⁶

Recommendations:

- **Call for sustainable long-term funding to ensure that the solutions to the increasing incidence of obesity for First Nations are community-driven and will have meaningful results which will enable First Nations families to heal from the impacts of colonization; and the devastating effects of residential schools and systematic poverty.**
- **First Nations communities require supports and investment in “prevention” through community-based programs which educate parents about healthy lifestyle choices and healthy weights, and intergenerational community-based programs which reconnect young parents with family, and reconnect community and culture to promote breastfeeding and childrearing practices.**
- **Sustainable, sufficient investments must be made across a broad range of social and health services, including basic infrastructure needs for First Nations such as housing, safe work and play environments, recreation facilities, water, mental wellness supports.**
- **Continued engagement and collaborative efforts to address the increasing incidence of obesity in Canada; the root causes, the consequences of inaction and apathy, and the way forward in a manner whereby First Nations communities can adapt, reform and realign wellness programs and services according to First Nations priorities.**

HIV and AIDS

Aboriginal people are 4% of the Canadian population but account for 16.2% of HIV cases; more specifically, 12.3% of those cases are First Nations.⁴⁷ Available surveillance information managed by the Public Health Agency of Canada reveals that First Nations are acquiring HIV

⁴⁶ See attached AFN Submission to Senate Committee on Social Affairs, Science Technology on the increasing incidence of obesity in Canada, causes, consequences moving forward.

⁴⁷ Public Health Agency of Canada, HIV-AIDS in Canada, Surveillance Report to December 31, 2014

primarily through shared needles for injection drug use, followed by unprotected sex; young First Nations women, ages 15-29 are at greatest risk of contracting HIV.⁴⁸ The behaviors leading to high rates of HIV exist in a context of poverty, discrimination and unresolved collective trauma, supported by deficits in housing, employment and emotional/spiritual stability.

Recommendations:

- **Increased investments into programs/policies that address the mental wellness needs of First Nations people as part of an overall strategy to close the gap in health status.**
- **Health systems improvements and increased access to low barrier harm reduction programs and services.**
- **Improvements to data collection instruments leading to disaggregated ‘Aboriginal’ data to allow for strategies that are specific to each population.**

Food Insecurity

Food security issues have far greater impact on First Nations living on reserve due to factors such as location of communities, especially in northern and isolated First Nation communities. Fly-in communities and communities only accessible through ice roads in the winter spend a higher proportion of their household income on food as compared to the general Canadian population who have access to a wider selection of food stores. In many northern First Nation communities you will find higher than average food prices due to transportation expense to transport food by air, rail, boat and road into First Nation communities. An example of higher food costs is two liters of milk costing \$7.99 in Old Crow, Yukon compared to \$3.35 in Edmonton, Alberta according to a Report of the Auditor General of Canada on the Nutrition North Canada program.⁴⁹

Recommendation:

- **That the state develops policies and programs in collaboration with First Nations that are specific to the issues that First Nations face as it relates to food security/insecurity.**
- **The AFN also recommends that these policies and programs target and promote access to healthy eating within all levels of the community, including First Nation adults, children and schools.**

The First Nations Education Gap (Articles 1, 2, 6, 13, 14, 15)

The imposed system of Indian Residential Schools (IRS) has had profoundly negative and long lasting impacts on generations of First Nations people across Canada.⁵⁰ These impacts include deeply harmful impacts on education outcomes, all aspects of health as well as harmful impacts on First Nations languages, cultural integrity and economic prospects. The multi-generational harms inflicted by the long shadow of the impacts of the IRS have been further compounded by a

⁴⁸ Ibid: <http://healthycanadians.gc.ca/publications/diseases-conditions-maladies-affections/hiv-aids-surveillance-2014-vih-sida/alt/hiv-aids-surveillance-2014-vih-sida-eng.pdf>

⁴⁹ Auditor General Report: http://www.oag-bvg.gc.ca/internet/English/parl_oag_201411_06_e_39964.html

⁵⁰ Final Report, The Truth and Reconciliation Commission of Canada, December 2015.

federal approach of conscious and chronic underfunding of First Nations education, particularly on reserves.

Numerous reports over the years have concluded that the gap in education outcomes between First Nations and Canadians will take generations to close at the current glacial pace of improvement. There are many contributing factors but a critical one is the inequitable funding arrangements and formulas currently in place.

The United Nations *Declaration on the Rights of Indigenous Peoples* provides in Article 14 that Indigenous peoples have the right to establish and control their educational systems and institutions. Article 19 directs States to consult and cooperate in good faith with Indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent on legislative or administrative measures that may affect them.

Funding formulas and fiscal arrangements with First Nations need to be re-designed with one key objective in mind – to end discrimination and to deliver services that meet the human rights standard of substantive equality. In all of this, the federal government must acknowledge that First Nations have the requisite expertise among our educators, administrators, community members, parents and leaders to identify needs, education standards and what constitutes culturally appropriate services – and it is our people who must lead.

The current funding model controlled and imposed by the federal government has not allowed on-reserve First Nation students to access the same quality of education as their off-reserve and non-First Nation peers. The AFN maintains that the current funding formula employed by Indigenous and Northern Affairs Canada (INAC) is inherently flawed, insufficient and deficient in several key aspects including:

- the federal refusal to fund culture and language programs separately from core subjects;
- establishing funding at the federal—rather than regional—level;
- funding tuition for students attending school off-reserve from the allotted budget for on-reserve operations.⁵¹

Recommendations:

- 1. Immediately lift the 2% funding cap on essential services and ensure adequate levels of funding for education to on-reserve schools.**
- 2. Address the funding gap for First Nation education and develop a long-term sustainable funding formula, including funding for school infrastructure.**
- 3. Develop a new funding formula in partnership and consultation with First Nations to ensure adequate resources are provided.**

Access of children with disabilities to inclusive education, need for sufficient qualified staff and teachers, including in isolated and rural areas

The AFN has insufficient data and information specific to students with disabilities in terms of access to inclusive education. We do not have sufficient data or estimates of the 'needs' to

⁵¹ Ibid., p. 10-14.

appropriately assess and calculate this question and address these important gaps. We do know that First Nation Educators note that there are inadequate supports for students with “special needs” and this is the biggest gap in funding for First Nation education overall: this includes but is not limited to transportation, pedagogical supports, technology, curriculum supports, etc.

In view of this, accurate and up-to-date health information is required to set priorities, guide resource allocation, and to evaluate the success of policies and programs already in place. (*Regional Health Survey (RHS) 2008-10, Chapter 13, Page 115*). According to the Regional Health Survey, ongoing health surveillance in First Nations communities is essential for determining the prevalence of chronic health conditions recognizing emerging health problems, identifying risk factors and determinants of health, and identifying changes over time. The RHS Further states: First Nations children are at a particularly high risk for injury. Research has demonstrated that long-term disability and death can result from an injury; therefore, reducing the proportion of First Nations children who become injured would contribute to improving quality of life and reducing mortality rates as well. As injury poses a significant problem for First Nations, specifically infants and school-aged children; intervention strategies that are implemented to keep First Nations children safe must continue to be developed and improved upon.

The following statistics show the significant needs of First Nations children on-reserve and in northern communities:

2.6% had ADD/ADHD in 2002/03 vs. 2.0% in 2008/10. Among those who had ADD/ADHD, 37.6% sought treatment in 2002/03 vs. 57.6% in 2008/10
1.1% had blindness or serious vision problems in 2002/03 vs. 0.9% in 2008/10. Among those who had blindness or serious vision problems, 32.5% sought treatment in 2002/03 vs. 54.6% in 2008/10.
1.8% had FASD in 2002/03 vs. 0.9% in 2008/10. Among those with FASD, 9.8% sought treatment in 2002/03 vs. 24.4% in 2008/10.
1.0% had a hearing impairment in 2008/10. Among those with a hearing impairment, 54.5% sought treatment in 2008/10.
2.9% had a learning disability in 2002/03 vs. 2.6% in 2008/10. Among those with a learning disability, 36.8% sought treatment in 2002/03 vs. 58.3% in 2008/10
4.7% had speech or language difficulties in 2008/10. Among those with a speech or language difficulty, 57.9% sought treatment in 2008/10.

Recommendations:

- 1. Canada should work with First Nations to develop increased improvements and prevention strategies to ensure First Nations children are safe from injury and disability, specifically for infants and school-aged children.**

2. **Canada should work with First Nations to ensure there are increased and updated national data/ surveillance to adequately address the needs specific to First Nations students with disabilities and access to inclusive education.**
3. **Canada should work with First Nations to address the funding gap for First Nation education and inadequate supports for students with “special needs” which includes, but, not limited to transportation, pedagogical supports, technology, curriculum supports.**

First Nations Languages Crisis (Articles 1, 2, 15)

Canada is a country which is officially bilingual in English and French. The Fraser Institute, a Canadian think-tank, has estimated that the ‘total observable cost of bilingualism’ in 2006 was between \$1 and \$1.2 billion.⁵² A more recent update, in 2012, estimates that Canada is currently spending approximately \$2.4 billion per year on bilingualism.⁵³ This stands in contrast to the mere \$5 million the federal government expends on the “Aboriginal Languages Initiative”.

“The loss of Aboriginal languages was not a product of Aboriginal indifference to their languages, but the result of systematic efforts by governments to discourage their use... The present state of affairs is bleak testimony to the efficacy of those policies. This reality generates special duties on governments to help undo what they have done,” stated Michael C. MacMillan in the Practice of Language Rights in Canada (1998: 185).

Entities such as the First Peoples Cultural Council of British Columbia, the Kanhawake Cultural Centre and the Ojibwe Cultural Foundation are some of the indigenous lead organizations that have developed and perfected language revitalization efforts which are resulting in fluency. In Canada, there are more than fifty-eight (58) indigenous languages. **Only about 30 of the remaining indigenous languages of Canada and the United States are still spoken by children.** (Krauss. M. 1992. The world’s languages in crisis. *Language* 68:4-10) Whether or not a language is still spoken by children stands as a key indicator of language survival. Forty-five years ago, there was an urgent need to preserve First Nations languages; now there is an emergency with only 2 out of 58 First Nations languages—Cree and Anishinabemowin (Ojibwa)—predicted to survive. Even if the languages survive, they may not be vibrant in each community. Some linguists say that we have a 5-7 year window of time to ensure that the majority of our languages do not become extinct. We cannot allow our people to experience such a loss to our traditions and culture. So we have an urgent situation, the political will and the practical solutions which have been developed by community champions, language activists and regional organizations. An Aboriginal Languages Act and a Languages Commissioner would serve to elevate the prestige of languages.

Recommendations:

⁵² Francois Vaillancourt and Oliver Couche, Official Language Policies at the Federal Level in Canada: Costs and Benefits in 2006, (Fraser Institute: Vancouver, 2006).

⁵³ Kathryn Blaze Carlson, “Official bilingualism costs \$2.4B a year: study”, National Post (January 6, 2012), online: <http://news.nationalpost.com/news/canada/official-bilingualism-costs-2-4b-a-year-study>.

- **Canada should implement indigenous Call to Actions regarding indigenous languages on an urgent basis, particularly state recognition such as Aboriginal Languages Acts and the Languages Commissioners**
- **Canada should provide sustainable, long-term funding for language revitalization initiatives and organizations as are designed and delivered by and for indigenous peoples**
- **Canada should grant official language status to the indigenous languages.**