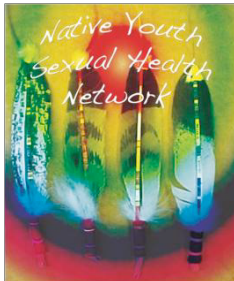


SUBMISSION FOR CANADA'S 2ND UNIVERSAL PERIODIC REVIEW

The Native Youth Sexual Health Network

www.nativeyouthsexualhealth.com

Member of ECOSOC



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Created in 1998 and established as a registered not-for-profit Canadian charity in 2005.

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The First Nations Child and Family Caring Society of Canada (the Caring Society) and the Native Youth Sexual Health Network (NYSHN), stand with Indigenous¹ children, youth and communities to ensure that Indigenous young people have the same opportunities as all others in Canada to have successful outcomes. The work of the two organizations uplifts all Indigenous Peoples by respecting their voices and experiences and ensuring that work is culturally safe and reflects the diversity of cultures and languages. The NYSHN and the Caring Society's work is rooted in human rights principles, reproductive justice, non discrimination and equity including initiatives in youth engagement, education, health, and child welfare.

¹ In Canada, the term 'Indigenous' refers to the three Aboriginal groups in Canada according to the Federal Government definition: Inuit, Métis and First Nations.

Background and Importance

Indigenous children and youth in Canada deserve the same opportunity to succeed as all other children in ways best suited to their culture and languages, including the rights to grow up safely at home, have access to education, be safe, be healthy and live in dignity and respect. Although these rights are reflected in the UN Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples, many Indigenous children and youth continue to have poor outcomes due to structural challenges such as poverty, poor housing, lack of access to proper healthcare, education and other essential programs services (Royal Commission on Aboriginal Peoples [RCAP], 1996). These daily challenges are often rooted in Canada's colonial history and further amplified by government policies and procedures, a failure to address large scale challenges and programs and services that do not reflect the distinct needs of Indigenous children and families.

In its last periodic review, Canada accepted the following recommendations with regard to its Indigenous peoples:

- ³⁵₁₇ 20. Continue policies and programmes aimed at reducing inequalities that still exist between the Aboriginal, recent immigrants and other Canadians (Vietnam);
- ³⁵₁₇ 28. Take effective measures to combat and put an end to discrimination against indigenous population and to elaborate and implement a National Action Plan to deal with this phenomenon (Azerbaijan); address root causes of discriminations, ensure effective access to justice, establish immediate means of redress and protection of rights of ethno-minorities, in particular, Aboriginals (Islamic Republic of Iran);
- ³⁵₁₇ 45. Integrate economic social and cultural rights in its poverty reduction strategies in a way that can benefit the most vulnerable groups in society, specially the Aborigines, afro-Canadians, migrants, persons with disabilities, youth, women with low incomes, and single mothers and adopt all necessary measures, including the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples, to guarantee Aboriginals the full enjoyment of their rights including economic, social and cultural so that their standard of living was similar to that of the rest of the citizens in Canada (Cuba);
- ³⁵₁₇ 51. Implement all international human rights instruments related to Aboriginals, women, Arabs, Muslims and other religious minorities, migrants and refugees and enhance and protect their rights against violations (Saudi Arabia);

The NYSHN and the Caring Society would like to bring to the forefront concerns of human rights violations against Indigenous children and youth in Canada. Since those recommendations were accepted, the following descriptions of specific human rights violations have not improved or changed in the past four years. This submission focuses on recommendations around four human rights priorities: 1) Right to Equality and Non Discrimination, 2) Right to Life, Liberty and Security of Person, 3) Right to Education, and 4) Right to Health.

1. RIGHT TO EQUALITY AND NON DISCRIMINATION

1.1 Child welfare

The Canadian Government provides inequitable child welfare funding undermining the rights, safety and wellbeing of First Nations children (Auditor General of Canada, 2008; Blackstock, Prakash, Loxley, and Wien, 2005; Office of the Provincial Advocate, 2010). Compared to non-Aboriginal children and youth, First Nations children are grossly overrepresented in the child protection system (Blackstock, et.al 2005). Currently, Canada is being held accountable for its longstanding pattern of providing inequitable and flawed child welfare services to First Nations children on reserves under the Canadian Human Rights Act. In 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society of Canada (the Caring Society) filed a complaint to the Canadian Human Rights Commission (the Commission) against Aboriginal Affairs and Northern Development Canada (AANDC). The complaint alleges that the Government of Canada has a longstanding pattern of providing flawed and inequitable funding, programs and policies for child welfare services provided to First Nations children on reserves. In 2008, the Canadian Human Rights Commission referred the case to the Canadian Human Rights Tribunal (CHRT) for a full hearing on the merits of the case. In addition, the Canadian Human Rights Commission joined the case as a party to the proceedings before the

CHRT representing the public good. Canada has continually tried to derail the hearings on legal technicalities however hearing dates has been set down at the Tribunal to hear the case on its full merits in February and March, 2013. The evasive tactics of the Government of Canada to escape a full hearing on whether or not it is discriminating against thousands of First Nations children is disturbing and requires international commentary.

1.2 Jordan's Principle

Jordan's Principle is a child first principle to resolving jurisdictional and funding disputes between and within the federal and provincial and territorial governments that get in the way of First Nations children living on reserves accessing government services on the same terms as other children. It was named in memory of Jordan River Anderson of Norway House Cree Nation in the province of Manitoba who was born in Winnipeg with complex medical needs. Although the doctors said that Jordan was well enough to go home, he lived unnecessarily in hospital for over 2 years while the Province of Manitoba and the Government of Canada fought over who should pay for his at home care because he was a First Nations child whose family lived on reserve. Jordan passed away at the age of 5, never having spent a day in a family home. Consistent with the non-discrimination rights in the UNCRC, "Jordan's Principle" was passed in the House of Commons in 2007. Jordan's Principle is a child first approach to resolve jurisdictional disputes within, or between, the federal and provincial/territorial governments where the government of first contact pays for the services immediately and jurisdictional issues can be resolved later. However since that time, the federal government and provincial/territorial governments have failed to properly implemented Jordan's Principle. The Canadian Paediatric Society (CPS) Report, *Are We Doing Enough?* (2012), rates the status and implementation of Jordan's Principle across the country in 2009 and then in 2011. Out of the 13 provinces and

territories in Canada, 8 have not yet introduced Jordan's Principle. Of the 5 provinces that have adopted Jordan's Principle, only the province of Nova Scotia was rated 'good', meaning that the "[p]rovince/territory has a dispute resolution process with a child-first principle for resolving jurisdictional disputes involving the care of First Nations children and youth" (CPS, 2012, p.29). The provinces or territories have not implemented Jordan's Principle since it passed in the House of Commons in 2005 and further to this, the status of Jordan's Principle remains stagnant from 2009-2011. Recently the Government of Canada gave its staff an award for its work on Jordan's Principle despite the poor implementation scoring on the Canadian Paediatric Society's report card as well as the numerous cases of jurisdictional disputes similar to that of Jordan. In an interview with the Aboriginal Peoples Television Network, Vandna Sinha, professor at McGill University, states that "it [is] clear that there are a lot of Jordan's Principle cases out there that aren't being addressed under the terms of the federal definition because they've tried to re-define and narrow Jordan's Principle in some way" (APTN, 2012). The number of cases that exists has yet to be determined however the *Wen:de report* (2005) estimated the number of cases in 12 First Nations child and family service agencies to be approximately 400 in the span of a year. As these children and youth do not receive what other children in the country receive, it would be recommended to stress the importance of full implementation of Jordan's Principle to ensure that the right to proper health is met, regardless of nationality or place of residence.

2. RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON

2.1 Indigenous Youth and Suicide

As stated in article 7 of the UN *Declaration*, Indigenous children and youth have the right to life and to be free from any act of genocide. Higher rates of youth suicide, the apprehension of Indigenous children from their families and inadequate access to culturally safe education are reflective of direct violations to these rights. Poor access to culturally safe education results from

several factors, including the need to leave an Indigenous community for education or inequalities in funding provided to schools in home communities. The removal of Indigenous children from their families and communities continues to be legislated through the authorization of the State with its roots in the Doctrine of Discovery. As elaborated in a conference paper around this year's theme of the Doctrine of Discovery at the United Nations Permanent Forum on Indigenous Issues, "the phrase 'Doctrine of Discovery' is an international problem of domination and dehumanization that has proven terribly destructive for Indigenous peoples throughout the globe" (UNPFII Conference Paper, 2012). For example, children's aid societies and family services in North America are a result of the poverty and systemic structural inequalities (i.e. parents who are incarcerated) that make it difficult for children to stay with their families.

A direct example of this can be seen within the territory of Nishnawbe Aski Nation (NAN) which had 427 completed suicides from 1986-2010. Of the 427, 57 occurred in children 10-14 years of age and 174 occurred in children and youth 15 to 20 years of age. Due to limited number of high schools in the majority of Indigenous communities in this area, children ages 13-14 years old must leave their homes to attend high school. This is also due to the inadequate funding formulas provided to Indigenous children and youth for education. Since 2007, this has resulted in the deaths of seven Indigenous children from the NAN region. The report from the Ontario Chief Coroner's stated that these deaths are "uniquely positioned against the back drop of colonialism, racism and social exclusion arising from histories of residential schools" (2011, p.14).

³⁵₁₇ First Nations youth commit suicide about five to six times more often than non-Indigenous youth.

³⁵₁₇ Suicide rates for Inuit youth are among the highest in the world, at 11 times the national average (Health Canada, 2012).

The high rates of suicide among young Two-Spirit and gender non-conforming youth are forms of violence that are currently being overlooked. The self-determined gender expression of Indigenous Peoples, for example, the freedom to identify as Two-Spirit, is something to be celebrated - not criminalized. Understanding the roots of suicide in Indigenous communities requires an approach that goes beyond the individual to a level where social factors are adequately addressed (AHF, 2007).

2.1. Missing and murdered Indigenous young women and girls and the prison system

The right to life has been a significant challenge for Indigenous women and girls in a system founded on violent laws and policies and systemic discrimination. The rates of missing and murdered Indigenous women continue to not be addressed in the country of Canada. Incarceration of Indigenous women in the prison system is a particular threat to the foundation of reproductive health and justice for Indigenous women and girls. A report released since Canada's last UPR indicates:

The current state of over-representation of Indigenous women in Federal Corrections is nothing short of a crisis. As of April 2010, Indigenous women accounted for 32.6% of the total female offender population. This means that 1 out of every 3 women federally incarcerated is of Indigenous descent (Wesley Group, 2012, p.46).

The incarceration of our bodies is the incarceration of our reproductive health, such as the unacceptable practice of shackling women who are incarcerated during pregnancy, labor and birth. Such control sets the stage for the further violations of the rights of Indigenous women.

Programs and policies are not only set up to incarcerate Indigenous women but also are not set up to adapt to women with children. Their offences either make them ineligible for programs such as the Mother-Child Program or they chose not to participate due a long/ongoing history of removal of Indigenous children from Indigenous communities (The Wesley Group, 2012). The increasing rates of incarceration of Indigenous women require immediate action as they are a continued form of institutional and structural violence from the state. These forms of violence in Canada and internationally resulted in the recommendation of an international expert group meeting (EGM) on combating violence against Indigenous women and girls in January 2012. We agree with the findings of the EGM report that highlight the need for increased support of Indigenous systems of justice. However we are concerned with the over policing and under protection of Indigenous peoples when state police systems and criminal justice are involved, and often directly responsible for violence.

We also support the submission to the Committee on All Forms of Discrimination Against Women (CEDAW) from Indigenous women from the Vancouver Downtown Eastside Women's Centre and the Native Women's Association of Canada which highlights the over 800 missing and murdered Indigenous women across Canada and calls for a UN inquiry under CEDAW's optional protocol into these cases, which have gone under- or un-investigated for far too long. Furthermore, we denounce the provincial Missing Women's Inquiry in British Columbia which denied the full, equal, and effective participation of Indigenous women who experience violence while allowing authorities responsible for the lack of due process to be overrepresented.

In addition we call for recognition of the need for a broader definition of the expansion of what is considered 'violence' pertaining to Indigenous peoples. The forms in which Indigenous women

and girls experience violence come not only from individual actors but systems that ignore Indigenous specific approaches.

3. RIGHT TO EDUCATION

3.1. Shannen's Dream

In 2012, the Federal Government of Canada released the Federal Budget and promised 275 million dollars over three years to partially address the inequities in First Nations education and to renovate schools on reserve. Although this amount may seem generous, this is far less than what is needed to achieve equity. First Nations children receive \$2000-\$3000 less for their education than non-Aboriginal children who receive provincially funded education (the Caring Society, 2010). This means that there is no funding or inadequate funding for things like special education, libraries, computers or technology, extracurricular activities, principals or directors. In addition, as of 2010, 48 new schools are needed across the country and approximately 29 schools are in need of substantial repairs (the Caring Society, 2010). Because education on reserves is often not quality education, many First Nations children and youth must leave their communities, taking them away from their families, culture and traditions. The financial situation of the Canadian Government does not appear to be a substantial factor, as within months of the 2012 Budget, the Prime Minister announced a new bridge project between Canada and the USA where Canada will pick up all costs, including the costs of buying property in the US state of Michigan to ensure this project goes ahead (Yahoo News, 2012). Although Canada says it will redeem the USA costs overtime it does not extend this same logic to investments in children despite significant evidence that investments in equity and children will result in significant benefits to the children and to the country. The Shannen's Dream report (2011) was submitted to the United Nations Committee on the Rights of the Child in 2011 asking for a full inquiry in First Nations

and Aboriginal education in Canada; this report could also guide the Universal Periodic Review as the inequities in education demonstrate a violation of human rights.

4. RIGHT TO HEALTH

4.1 Indigenous Youth and increasing rates HIV and AIDS

Indigenous youth in Canada continue to face disproportionate rates of HIV and AIDS as compared to non-Indigenous youth. As indicated in the most recent epidemiological reports “The proportion of positive HIV test reports among youth identified as [Indigenous] has shown a generally increasing trend, from 28.8% of positive HIV test reports in 1998 to 40.9% in 2008” (PHAC, 2010). The National Aboriginal Youth Strategy on HIV and AIDS in Canada (NAYSHAC) authored by the National Aboriginal Youth Council on HIV/AIDS (NAYCHA) outlines that “unmet social determinants of health make it specifically difficult to lower the alarmingly high rates of HIV and AIDS among Aboriginal Youth in Canada (2010, p.8). The increased rates of HIV and AIDS are an example where legacies of residential schools and colonialism are directly linked (Taking Action, 2012). There is minimal culturally specific HIV and AIDS support and resources for Indigenous women and youth that supports a harm reduction approach. There is still a need to reduce stigma and fear; while the global epidemic of HIV and AIDS rates are decreasing, these rates are increasing for Indigenous youth and women. Within this strategy the NAYCHA additionally supports the need for a strong human rights framework to address the HIV and AIDS epidemic:

NAYSHAC is engrained and informed with a human rights framework. It is, therefore, important for government partners to protect and fulfill the rights of Aboriginal youth with due diligence by working towards substantive equality for all Aboriginal youth at local, regional, provincial and national levels (CAAN, p.9, 2010).

While the rates of HIV among Indigenous youth continue to increase, the Canadian government has cut financial support to several organizations with health portfolios that supported fighting this epidemic; including the National Aboriginal Health Organization, the Native Women's Association of Canada Health fund, the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Canadian Aboriginal AIDS Network. The context of these cuts to Aboriginal health organizations at this time shows a severe lack of commitment to the human rights of Indigenous youth affected or living with HIV and AIDS.

4.2 Environmental Violence and Reproductive Health

The ways in which environmental racism affects Indigenous women and children are a clear reproductive justice issue that must be addressed by Canada.

NYSHN as a participating organization with Indigenous grassroots women created the 2nd report and declaration of "Our Health, Life and Defense of Our Lands, Rights and Future Generations" (NYSHN, 2012) from the 2nd Indigenous Women's Reproductive and Environmental Health gathering in Alaska in April 2012. This report includes particular concerns around environmental violence and how it relates to increased sexual violence and the overall assault to our Mother Earth through resource extractive industries.

The introduction of resource extraction in Indigenous communities creates a space where environmental violence has specific colonial impacts on women and girls. One example in Canada is the increasing rates of sexually transmitted infections (STIs) among Indigenous youth and women in resource impacted areas such as gas, mining, and oil. This comes as part of already increasing rates of STI's among Indigenous youth and women (Pauktuutit, 2005, & Gibson & Klinck, 2005). These increased rates of STI's result from increased rates of domestic violence and rape from those working in resource extraction.

Additionally, another particular aspect of environmental violence that affects the overall health and well-being of Indigenous women and future generations is inadequate access and culturally unsafe reproductive health services and resources for Indigenous women. Due to the lack of appropriate options, conditions are created for increased experiences of violence within the industrialized medical system. This can include a lack of access to traditional and ceremonial services such as traditional midwifery, and being forced to leave ones community to birth with minimal support.

Recommendations:

³⁵₁₇ Canada fully implements the United Nations Declaration on the Rights of Indigenous Peoples and fully addresses all recommendations pertaining to Indigenous peoples in Canada as outlined in the United Nations Committee on the Rights of the Child’s Concluding Observations.

³⁵₁₇ Canada allows a full hearing on the merits of the First Nations child welfare case.

³⁵₁₇ Canada implements Jordan’s Principle and Shannen’s Dream for better outcomes in health and education and to ensure the right to non discrimination.

³⁵₁₇ Canada uses the Declaration of “Our Health, Life and Defense of our Lands, Rights and Future Generations” as a template to understand specific forms of environmental violence on Indigenous women, girls and future generations.

³⁵₁₇Canada works with Indigenous communities to support the right to life in the case of: rates of suicide of Indigenous youth, and missing and murdered Indigenous women.

³⁵₁₇Canada supports the work of Indigenous community-based responses to the HIV and AIDS epidemic for Indigenous youth. This includes working with the National Aboriginal Youth Council on HIV and AIDS.

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