



**Chair in  
Indigenous  
Governance**

# Impact of the COVID-19 Pandemic on Indigenous Women and Girls in Canada

Response to the call for input by Jose Francisco Cali Tzay, Special Rapporteur on the rights of Indigenous Peoples for his report to the General Assembly on the Impact of COVID-19 on Indigenous Peoples

Submitted June 19, 2020 by the Canadian Feminist Alliance for International Action (FAFIA) and Dr. Pamela Palmater, Chair in Indigenous Governance at Ryerson University

## Table of Contents

Acknowledgments .....	3
Contact Information .....	3
I. Introduction.....	4
II. Deteriorating Socio-Economic Conditions Increase Risk of Infection.....	5
1. Higher Rates of Underlying Health Conditions .....	6
2. Under-Resourced Healthcare Systems .....	6
3. Insufficient Personal Protective Equipment (PPE) and Test Kits .....	7
4. No Clean Water, Overcrowded Homes.....	8
5. Institutionalization Increases Risk of Infection .....	8
a. Homelessness Shelters .....	8
b. Prisons, Jails, and Youth Corrections Institutions.....	9
c. Child Welfare System.....	10
III. Gendered Violence, Exploitation, Disappearances and Murders of Indigenous Women and Girls .....	11
1. Increased Risk of Domestic Violence .....	11
2. Police Racism and Brutality, Sexualized Violence and Killings .....	12
3. Canada Deferred National Action Plan on Crisis of MMIWG2S+.....	13
IV. Pandemic Measures Used to Breach Indigenous Rights .....	14
1. Alberta Legislature Passed a Bill to Ban Pipeline Protests .....	14
2. Refusal to Halt Pipelines and other Energy Projects.....	14
3. Extractive Industry “Man Camps” .....	15
V. Inadequacy of Federal and Provincial COVID-19 Response Measures .....	16
1. No Decision-Making Voice in Pandemic Plans .....	16
2. Federal Pandemic Response Funding for Indigenous Peoples Inadequate .....	17
3. Race and Sex Disaggregated Data Collection by Governments and Agencies Needed.....	18
VI. Conclusion.....	19
Appendix A – Recommendations .....	20

## Acknowledgments

The Canadian Feminist Alliance for International Action (FAFIA) and Dr. Pamela Palmater, Chair in Indigenous Governance at Ryerson University provide these submissions to the UN Special Rapporteur on the rights of Indigenous Peoples, Jose Francisco Cali Tzay, in response to a call for input on the impacts of the novel 2019 coronavirus (COVID-19 or “the virus”) on Indigenous peoples. Pamela Palmater, Shelagh Day, Lara Koerner Yeo and Amelia Philpott prepared these submissions. A particular thank you to Amelia Philpott for her work on these submissions.

FAFIA is an alliance of more than sixty Canadian women’s organizations that was founded in February 1999. One of the central goals of FAFIA is to ensure that Canadian governments respect, protect, and fulfill the commitments to women that they have made under international human rights treaties and agreements. As a broad alliance of women’s organizations, FAFIA is committed to advancing the human rights of all women and has worked intensively in recent years on issues related to the advancement and protection of the human rights of Indigenous women and girls in Canada.

The Chair in Indigenous Governance is supported by Ryerson University as part of its commitment to Indigenous education, diversity and social justice. The Chair’s mandate is to conduct research and scholarship on Indigenous law, governance and politics with a focus on Indigenous sovereignty and nation building. Dr. Pam Palmater, the presiding Chair, has focused her interventions at the United Nations on systemic discrimination against Indigenous women and girls in Canada, including socio-economic discrimination; violence against Indigenous women and girls, and police racism, brutality and sexualized violence.

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## I. Introduction

Indigenous women and girls in Canada urgently need a feminist COVID-19 pandemic-response plan to respond to and eliminate the structural inequities perpetuating discrimination against them which have been further exposed and exacerbated by COVID-19. As a result of a long history of discriminatory state laws, policies and practices, actions and omissions carried out by all levels of governments in Canada's federal system, Indigenous peoples in Canada<sup>1</sup> have long been over-represented in poverty,<sup>2</sup> homelessness,<sup>3</sup> domestic abuse, homeless shelters,<sup>4</sup> jails and prisons;<sup>5</sup> and group homes. Federal and provincial governments' continued refusal to fully implement race and gender disaggregated data collection measures prevent us from identifying more precisely the impact of COVID-19 on Indigenous women and girls. However, we do know that Canada's health data has linked all the above risk factors to higher risks of COVID-19 infection, severe outcomes, and death from the virus.<sup>6</sup>

These risk factors are compounded for Indigenous women and girls who – in addition to the above – face shockingly high incidences of physical abuse, sexualized violence, exploitation, disappearances and murders. In 2015, the CEDAW Committee found that Canada committed grave human rights violations against Indigenous women and girls in contravention of CEDAW.<sup>7</sup> In 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG

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<sup>1</sup> We use the term “Indigenous peoples” to encompass First Nations, Inuit, and Métis peoples; three distinct groups with differing circumstances and histories. There are 634 individual First Nation “bands” mostly governed by Canada's *Indian Act, 1985* representing 50-60 traditional Nations. The Inuit live in the arctic circumpolar region of Canada and are not governed by the Indian Act. The Metis identify as their own Nation with their own history and culture.

<sup>2</sup> David Macdonald, Daniel Wilson, “Shameful Neglect: Indigenous Child Poverty in Canada” (Ottawa: Canadian Centre for Policy Alternatives, 2016), online: <[https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous\\_Child%20\\_Poverty.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous_Child%20_Poverty.pdf)>.

<sup>3</sup> Caryl Patrick, Homeless Hub, “Aboriginal Homelessness in Canada: A Literature Review” (Ottawa: Canadian Homelessness Research Network Press, 2014), online: <<https://www.homelesshub.ca/sites/default/files/AboriginalLiteratureReview.pdf>> [Aboriginal Homelessness in Canada Review].

<sup>4</sup> Greg Morneau, “Canadian residential facilities for victims of abuse, 2017/18” (Ottawa: Statistics Canada, 2019), online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00007-eng.htm>>.

<sup>5</sup> Office of the Correctional Investigator, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: OCI, January 21, 2020), online: <<https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>> [OCI January 2020 Report].

<sup>6</sup> Government of Canada, “Coronavirus disease (COVID-19): Outbreak update” (May 21, 2020), online: <<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>>.

<sup>7</sup> Committee on the Elimination of Discrimination against Women, “Report of the inquiry concerning Canada of the Committee on 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” (2015) CEDAW/C/OP.8/CAN/1 online, <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW\\_C\\_OP-8\\_CAN\\_1\\_7643\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf)> [CEDAW Report].

National Inquiry) found Canada guilty of historical and ongoing genocide.<sup>8</sup> Canada's consistent failures to remedy these human rights violations committed against Indigenous women and girls and their communities is exacerbated by COVID-19, and forces them into precarious situations, and increased risks of both infection and violence.<sup>9</sup>

Federal and provincial governments have further undermined the safety and wellbeing of Indigenous women, girls, and their communities during the pandemic by refusing to halt the production of extractive projects on their lands and taking legislative action to undercut Indigenous rights. These actions are inconsistent with Indigenous peoples' right to self-determination, and their treaty rights, Aboriginal rights and land rights are protected under both domestic and international law.<sup>10</sup>

## II. Deteriorating Socio-Economic Conditions Increase Risk of Infection

Years of chronic underfunding of First Nations, Inuit and Metis communities mean that Indigenous women and girls are subjected to deteriorating and impoverished socio-economic conditions, which contribute to their higher risks of COVID-19 infection and the economic impacts of pandemic measures.

Well before the pandemic in 2015, the UN Committee on the Elimination of Discrimination Against Women found that Canada has committed grave violations against Indigenous women by failing to redress their impoverished socio-economic conditions.<sup>11</sup> COVID-19 has both illuminated and exacerbated these pre-existing socio-economic inequalities.

The historic sex-based discriminatory exclusion of thousands of First Nation women and their descendants from registration under the *Indian Act*, has denied them membership in their First Nations, treaty rights, and access to critical social programs and services.<sup>12</sup> While recent

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<sup>8</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls" (Ottawa: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019) [*National Inquiry*].

<sup>9</sup> *CEDAW Report*, *supra* note 7 at para 214, page 53.

<sup>10</sup> Several United Nations agencies and other international bodies have highlighted concerns that Indigenous women face disproportionate risks a result of the COVID-19 pandemic in comparison to general populations: See UN Department of Economic and Social Affairs, "Indigenous Peoples and the COVID-19 Pandemic: Considerations" (undated) at p. 1 [*UNESA COVID Considerations*]; UN Inter-Agency Support Group on Indigenous Issues, "Indigenous Peoples and COVID-19: a Guidance Note for the UN System" (April 23, 2020) at p. 2 [*UNIASGII COVID-19 Guidance Note*]; the Inter-American Commission of Women, "COVID-19 in Women's Lives: Reasons to Recognize Differential Impacts" at p. 19 [*IACW COVID Report*].

<sup>11</sup> *CEDAW Report*, *supra* note 7 at para 119, p. 30.

<sup>12</sup> Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No 2020/2010*, 124<sup>th</sup> Sess, UN Doc CCPR/C/124/D/2020/2010 (11 January 2019), online:

amendments to the *Indian Act* have addressed some of this discrimination, federal officials have slowed registration during the pandemic, leaving thousands of First Nation women and children without access to critical services.

## 1. Higher Rates of Underlying Health Conditions

The UN Committee on Economic Social and Cultural Rights (CESCR) noted that Indigenous people suffer from higher rates of underlying health conditions putting them “at greater risk of developing severe health complications from COVID-19”.<sup>13</sup> Indigenous women in particular have higher rates of heart disease and stroke, and attempted suicides.<sup>14</sup> Human Rights Watch has also documented that Indigenous peoples in Canada are more likely to experience more severe symptoms from COVID-19 because of conditions such as tuberculosis (TB) and diabetes.<sup>15</sup>

## 2. Under-Resourced Healthcare Systems

The chronic and discriminatory underfunding of healthcare and associated infrastructure and supports in Indigenous communities severely limits their capacity to manage serious outbreaks of COVID-19.<sup>16</sup>

Many Indigenous communities, especially those which are remote, do not have hospitals or comprehensive medical centres on site. To receive treatment in these cases, community members often have to be transported by air (medevac or air ambulance) to reach a hospital.<sup>17</sup>

Even then, many regional hospitals are so chronically underfunded, that they are not equipped to accommodate the required number of patients in the event of a serious outbreak, particularly where they are servicing more than one Indigenous community.<sup>18</sup> When the pandemic started,

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<[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR\\_C\\_124\\_D\\_2020\\_2010\\_28073\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR_C_124_D_2020_2010_28073_E.pdf)>.

<sup>13</sup> Committee on Economic, Social and Cultural Rights, *Statement on the coronavirus disease (COVID-19) pandemic and economic, social, and cultural rights* (17 April 2020) at p. 2-3 [CESCR COVID Statement].

<sup>14</sup> See our previous report: FAFIA, RUCIG et al, *Indigenous Women and Women in Detention: Report to the Committee on the Elimination of Discrimination against Women on the Occasion of the Committee’s Eighth and Ninth Periodic Review of Canada*, (October 2016) at p. 6, online: <<http://fafia-afai.org/wp-content/uploads/2016/10/Canadian-Association-of-Elizabeth-Fry-Societies-Chair-in-Indigenous-Governance-FAFIA.pdf>>.

<sup>15</sup> TB rate among Indigenous people are almost 6 times that of overall Canada rate, and in Nunavut this rate rises to over 38 times that of the national population. See Canadian Public Health Association, “TB and Aboriginal people” Online: <<https://www.cpha.ca/tb-and-aboriginal-people>>.

<sup>16</sup> For example, in 2016 the Canadian Human Rights Tribunal held that Canada is discriminating against First Nations children by underfunding child welfare services on reserves. Canada has yet to comply with any of the tribunal’s orders and has in fact appealed the ruling. The FNCFCS submission includes a detailed account of this ruling and Canada’s subsequent non-compliance.

<sup>17</sup> Meg Black, “COVID-19 in Canada: Fears Mount that Indigenous Communities Could Be Left Behind” *Global Citizen* (April 16, 2020) online: <<https://www.globalcitizen.org/en/content/covid-19-in-canada-indigenous-communities/>> [Black article].

<sup>18</sup> *Ibid.*

some doctors left remote First Nation communities leaving nurses struggling to provide care in their communities.<sup>19</sup>

### 3. Insufficient Personal Protective Equipment (PPE) and Test Kits

The World Health Organization has emphasized that diagnostic testing and contact tracing are “critical” to a comprehensive strategy to control the spread of COVID-19,<sup>20</sup> and that those who treat or come into contact with COVID-19-positive patients must wear PPE to stop the spread.<sup>21</sup> The capacity of Indigenous peoples in Canada to manage outbreaks is severely compromised by inadequate or nonexistent access to PPE and testing supplies.<sup>22</sup>

Human Rights Watch reported that overall, Indigenous communities have not been receiving enough PPE, medical or testing equipment.<sup>23</sup> The Northern Inter-Tribal Health Authority which services 33 First Nations in Northern Saskatchewan reported in April that 40% of their facilities did not have sufficient PPE to manage an outbreak.<sup>24</sup> Some communities have reported that pre-ordered PPE and supplies saw orders that were only partially filled,<sup>25</sup> and others have reported informally that supplies were diverted away from their communities.

Neskantaga First Nation in Ontario had so few testing and medical supplies that it declared a state of emergency.<sup>26</sup> Others, such as the Temagami First Nation and Niisaachewan Anishinaabe

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<sup>19</sup> Dylan Robertson, “Nurses struggle to provide care as docs pulled out of reserves” *Winnipeg Free Press* (March 26, 2020) online: <<https://www.winnipegfreepress.com/special/coronavirus/nurses-struggle-to-provide-care-as-docs-pulled-out-of-reserves-569143252.html>>.

<sup>20</sup> World Health Organization, “Contact Tracing in the context of COVID-19: Interim Guidance” (10 May 2020), online: <<https://apps.who.int/iris/handle/10665/332049>>.

<sup>21</sup> *Ibid.*

<sup>22</sup> Kristy Kirkup, “Several First Nations grapples with confirmed COVID-19 cases, press government for help” *Globe and Mail* (April 6, 2020) online: <<https://www.theglobeandmail.com/canada/article-several-first-nations-grapple-with-confirmed-covid-19-cases/>>. First Nations reporting they do not have health care infrastructure, test swabs or personal protective equipment [Kirkup article]. See also: Teresa Wright “First Nations health authorities tell Commons committee they need more PPE, testing supplies” *The Star* (May 24, 2020) online: <<https://www.thestar.com/news/canada/2020/05/24/first-nations-health-authorities-tell-commons-committee-they-need-more-ppe-testing-supplies.html>> [Wright article].

<sup>23</sup> Human Rights Watch, *Systemic Inequities Increase COVID-19 risk for Indigenous People in Canada* (June 9, 2020) online, <<https://www.hrw.org/news/2020/06/09/systemic-inequities-increase-covid-19-risk-indigenous-people-canada>> [HRW Report]; See also Alexandra Mae Jones, “Northern Sask. Outbreak reveals plight of Indigenous communities during COVID-19”, *CTC News* (May 10, 2020), online: <<https://www.ctvnews.ca/canada/northern-sask-outbreak-reveals-plight-of-indigenous-communities-during-covid-19-1.4933431>>.

<sup>24</sup> Kyle Benning, “Northern Saskatchewan First Nations communities concerned over lack of PPE for health-care workers”, *Global News* (April 2020) online: <<https://globalnews.ca/news/6795252/saskatchewan-first-nations-ppe-coronavirus/>>.

<sup>25</sup> Kyle Benning “Northern Saskatchewan First Nations communities concerned over lack of PPE for health-care workers” *Global News* (April 8, 2020) online: <<https://globalnews.ca/news/6795252/saskatchewan-first-nations-ppe-coronavirus/>>.

<sup>26</sup> *Supra* note 22, Kirkup article, Wright article.

Nation have received no testing kits at all.<sup>27</sup> For some Indigenous communities, tests have to be sent to provincial labs, meaning they have to wait longer to obtain results.<sup>28</sup>

#### 4. No Clean Water, Overcrowded Homes

Please see the submission of the First Nations Child and Family Caring Society (FNCFC) regarding barriers to clean drinking water and overcrowded housing. We endorse their submissions in full.<sup>29</sup>

#### 5. Institutionalization Increases Risk of Infection

##### a. Homelessness Shelters

For the many homeless Indigenous women and girls in Canada,<sup>30</sup> advice to “stay home” is impossible to follow.<sup>31</sup> Indigenous peoples represent about half of all homeless people in Canada, representing as much as 90% in some urban areas.<sup>32</sup> Given that upwards of 80% of the homeless are “invisible”, it is hard to track specific gender-based data.<sup>33</sup> Homeless shelters do not allow for physical distancing, risk being over-crowded, and place individuals who use shelter services at greater risk of contracting the virus.<sup>34</sup> Indigenous women and girls who are precariously housed, street involved, or homeless, often cannot find room at shelters or they experience violence in those shelters and thus are forced to live on the streets.<sup>35</sup> COVID-19 outbreaks have been

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Supra* note 23, *HRW Report*.

<sup>30</sup> A 2014 study found that Indigenous people are 8 times more likely than the overall population in Canada to experience homelessness: *Supra* note 4 [Aboriginal Homelessness in Canada Review] at p. 22.

<sup>31</sup> Goldblatt Partners (on behalf of others), “COVID-19 and Outbreaks in Toronto’s Shelter System: Letter to the Attorney General of Canada” (Toronto, ON: April 20, 2020), online: <<http://www.aboriginallegal.ca/assets/2020-04-21-letter-to-city-of-toronto-re-covid-19-and-toronto-shelter-system.pdf>>.

<sup>32</sup> Yale Belanger, et. al., “Accessing Urban Aboriginal Housing and Homelessness in Canada” Final report prepared for the National Association of Friendship Centres (NAFC) and the Office of the Federal Interlocutor for Metis and Non-Status Indians (OFI) (March 30, 2012) online: <[https://homelesshub.ca/sites/default/files/attachments/Final\\_Belanger\\_Housing\\_and\\_Homeless\\_-\\_6\\_May\\_2012.pdf](https://homelesshub.ca/sites/default/files/attachments/Final_Belanger_Housing_and_Homeless_-_6_May_2012.pdf)>.

<sup>33</sup> *Ibid* at p. 2.

<sup>34</sup> *Ibid.*

<sup>35</sup> Christopher Curtis “Homeless Indigenous women are ‘turned away by the system’ when seeking treatment: shelter doctor” *Montreal Gazette* (January 31, 2019) online: <<https://montrealgazette.com/news/local-news/homeless-indigenous-women-are-turned-away-by-the-system-when-seeking-treatment-shelter-director>>.



documented in homeless shelters across Canada<sup>36</sup> leading to both infections and deaths.<sup>37</sup> Similar outbreaks have impacted Indigenous women shelters as well.<sup>38</sup>

## **b. Prisons, Jails, and Youth Corrections Institutions**

The Inter-American Commission of Women emphasized that Indigenous women and women “deprived of liberty” (i.e. detained in prisons, jails) are among groups at higher risk of contracting COVID-19.<sup>39</sup> Jails and prisons in Canada are notorious for over-crowding, lack of cleanliness and a critical lack of access to healthcare and mental health services.<sup>40</sup> They are some of the worst places to be during a pandemic.<sup>41</sup>

Indigenous women represent an alarming 43%<sup>42</sup> of women in Canadian federal prisons despite representing only 4% of the female population in Canada.<sup>43</sup> They are the fastest growing prison population overall – with a 3% increase reported by Correctional Services Canada (CSC) from the numbers reported by the UN Special Rapporteur on Violence Against Women in March 2018.<sup>44</sup> In provincial jails and prisons, Indigenous women can represent as much as 97% of the prison population.<sup>45</sup>

More than 91% of Indigenous women and girls in prisons have also suffered physical or sexual abuse prior to being incarcerated and once incarcerated are at greater risk of being sexually harassed, exploited and abused by guards.<sup>46</sup>

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<sup>36</sup> Jon Woodward, “Second COVID-19 case confirmed in Vancouver homeless shelter” *CTV News* (April 9, 2020), online: <<https://bc.ctvnews.ca/second-covid-19-case-confirmed-in-vancouver-homeless-shelter-1.4891187>>; CBC News, “Toronto reports 2<sup>nd</sup> COVID-19-related death in its shelter system” (May 13, 2020), online: <<https://www.cbc.ca/news/canada/toronto/covid-19-toronto-may-13-1.5567430>>.

<sup>37</sup> *Ibid.*

<sup>38</sup> Anne Leclair, “Native Women’s Shelter of Montreal closes after COVID-19 outbreak”, *Global News* (May 18, 2020), online: <<https://globalnews.ca/news/6957369/native-womens-shelter-of-montreal-closes-after-covid-19-outbreak/>>.

<sup>39</sup> *Supra* note 10, *IACW COVID Report* at p. 18.

<sup>40</sup> *Supra* note 31.

<sup>41</sup> In a correctional institute for women in Quebec, 60% of inmates had contracted COVID-19 as of April 23: “Prisoners’ death toll will mount without releasing most vulnerable inmates”, *Policy Options* (April 23, 2020), online: <<https://policyoptions.irpp.org/magazines/april-2020/prisoner-death-toll-will-mount-without-releasing-most-vulnerable-inmates/>>.

<sup>42</sup> *Supra* note 5, *OCI January 2020 Report*; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, by Dubravka Simonovic, GE.19-1903, UNOHCHR 41<sup>st</sup> Sess, UN Doc A/HRC/41/42/Add.1 (2019) online: <<https://digitallibrary.un.org/record/1641160?ln=en>>, at p. 13 [*SRVAW 2019 Report on Canada*].

<sup>43</sup> Vivian O’Donnell, Susan Wallace, “First Nations, Metis and Inuit Women” *Statistics Canada* (July 2011) online: <<https://www150.statcan.gc.ca/n1/en/pub/89-503-x/2010001/article/11442-eng.pdf?st=MkFiCkrG>>.

<sup>44</sup> *Supra* note 42, *SRVAW 2019 Report on Canada* at p. 13.

<sup>45</sup> Statistics Canada, “Admissions to adult custody, by sex, Aboriginal identity and jurisdiction, 2017/18” *Statistics Canada* (2019) online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010/tbl/tbl05-eng.htm>>.

<sup>46</sup> Martha Paynter, “Sexual assault in prison: vulnerable women prisoners have few protections and face reprisal for reporting attacks”, *Halifax Examiner* (May 24, 2019), online: <<https://www.halifaxexaminer.ca/featured/sexual-assault-in-prison-vulnerable-women-prisoners-have-few->

Indigenous youth are 7% of Canada's youth population but represent 50% of those in youth corrections.<sup>47</sup> In some provinces, such as Saskatchewan, Indigenous girls represent 98% of those incarcerated in youth corrections.<sup>48</sup>

CSC has failed to act on the urgent calls of Indigenous women, human rights experts and prison justice advocates to urgently decarcerate Indigenous women and girls in response to COVID-19 and provide them with immediate housing and other supports.<sup>49</sup>

### c. Child Welfare System

We fully endorse the submission of the First Nation Child and Family Services and all of their recommendations. Indigenous children represent more than 50% of all children in foster care<sup>50</sup>, some of whom are housed in group homes increasing their risks of infection.<sup>51</sup> These children already face an increased risk of death because they are in the child welfare system.<sup>52</sup>

During the pandemic, the province of Ontario has allowed group homes to increase their resident population, and suspended in person inspections of homes – putting Indigenous children at even greater risk.<sup>53</sup>

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protections-and-face-reprisal-for-reporting-attacks/"; Lori Culbert and Dan Fumano, "Exclusive: BC jail guard accused of sexually abusing 200 young inmates", *Vancouver Sun* (November 23, 2019), online: <<https://vancouversun.com/news/local-news/exclusive-b-c-jail-guard-accused-of-sexually-abusing-200-young-inmates>>; Pamela Palmater, "Public Inquiry needed to address sexualized violence in policing and corrections system", *Lawyers Daily* (November 6, 2017), online: <<https://www.thelawyersdaily.ca/articles/5055/public-inquiry-needed-to-address-sexualized-violence-in-policing-and-corrections-system-pamela-palmater>>.

<sup>47</sup> Department of Justice Canada, "Indigenous over-representation in provincial/territorial corrections" Government of Canada (September 2018) online: <<https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2018/nov01.html>>.

<sup>48</sup> Kelly Geraldine Malone "Nearly half of Canada's incarcerated youth are Indigenous, according to Statistics Canada" CBC News (June 24, 2018) online: <[https://www.cbc.ca/news/canada/manitoba/youth-incarcerated-indigenous-half-](https://www.cbc.ca/news/canada/manitoba/youth-incarcerated-indigenous-half-1.4720019#:~:text=In%20the%20provinces%2C%20the%20numbers,82%20per%20cent%20for%20girls)

[1.4720019#:~:text=In%20the%20provinces%2C%20the%20numbers,82%20per%20cent%20for%20girls](https://www.cbc.ca/news/canada/manitoba/youth-incarcerated-indigenous-half-1.4720019#:~:text=In%20the%20provinces%2C%20the%20numbers,82%20per%20cent%20for%20girls)>.

<sup>49</sup> *Supra* note 34, *SRVAW 2019 Report on Canada*; Pamela Palmater and Kim Pate, "Prisoners' death toll will mount without releasing most vulnerable inmates", *Policy Options* (April 23, 2020), online:

<<https://policyoptions.irpp.org/magazines/april-2020/prisoner-death-toll-will-mount-without-releasing-most-vulnerable-inmates/>>. See also: Pamela Palmater, "COVID-19 pandemic plan needed for Canada's jails and prisons" *APTN News* (March 23, 2020) online: <<https://www.aptnnews.ca/national-news/covid-19-pandemic-plan-needed-for-canadas-jails-and-prisons/>>.

<sup>50</sup> Annie Turner "Living arrangements of Aboriginal children aged 14 and under" *Statistics Canada* (April 13, 2016) online: <<https://www150.statcan.gc.ca/n1/pub/75-006-x/2016001/article/14547-eng.htm>>.

<sup>51</sup> Rachel Browne, "Children in Ontario group homes and foster care test positive for coronavirus" *Global News* (May 9, 2020) online: <<https://globalnews.ca/news/6924993/coronavirus-ont-group-home-foster-care/>>.

<sup>52</sup> Kenneth Jackson, "Death as Exepcted: Inside a child welfare system where 102 Indigenous kids died over 5 years" *APTN News* (September 2019) online: <<https://www.aptnnews.ca/national-news/inside-a-child-welfare-system-where-102-indigenous-kids-died-over-5-years/>>.

<sup>53</sup> Kenneth Jackson, "Ontario increases size of foster homes, allow inspections over telephone due to pandemic" *APTN News* (June 9, 2020) online: <<https://www.aptnnews.ca/nation-to-nation/ontario-increases-size-of-foster-homes-allow-inspections-over-telephone-due-to-pandemic/>>.

Some Indigenous women have been prevented from seeing their newborn and young children in care because of the pandemic.<sup>54</sup> Despite widespread calls for a ban on birth alerts, the use of birth alerts means that provincial officials can apprehend Indigenous babies at birth and some provinces have delayed the banning the practice under the guise of covid-19.<sup>55</sup> Indigenous women suffer devastating impacts when their children are apprehended by the state, including higher rates of depression, anxiety and suicide.<sup>56</sup>

- **See Appendix A, Recommendations 1 through 11**

### **III. Gendered Violence, Exploitation, Disappearances and Murders of Indigenous Women and Girls**

#### **1. Increased Risk of Domestic Violence**

The Special Rapporteur on Violence Against Women released a statement in March 2020 voicing concern that the calls to isolate in place in response to COVID-19 would increase rates of domestic violence against women.<sup>57</sup>

Advice to self-isolate to reduce the spread of COVID-19 has potentially lethal consequences for Indigenous women and girls. A survey conducted by the Native Women’s Association of Canada reported a 7% increase of Indigenous women reporting intimate-partner violence in the past three months as compared with rates over the past 5 years.<sup>58</sup> Not only are they at increased risk of domestic violence, but they cannot rely on state authorities to intervene, and face a critical lack of safe housing and emergency shelters.<sup>59</sup>

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<sup>54</sup> Kenneth Jackson “‘There is no timetable’: Courts refuse to let these three moms see children during pandemic” APTN News (April 13 2020) online: <<https://www.aptnnews.ca/national-news/there-is-no-timetable-courts-refuse-to-let-these-three-moms-see-children-during-pandemic/>>. See also: Kelly Geraldine Malone “ ‘There isn’t consistency:’ Coronavirus response varies for children in care” Globe and Mail (March 30 2020) online: <<https://www.theglobeandmail.com/canada/article-there-isnt-consistency-coronavirus-response-varies-for-children-in/>>.

<sup>55</sup> Melissa Ridgen “Manitoba says its delaying birth alert ban due to covid-19” APTN News (March 31 2020) online: <<https://www.aptnnews.ca/national-news/manitoba-says-its-delaying-birth-alert-ban-due-to-covid-19/>>.

<sup>56</sup> CBC News “‘Living Death’: Study suggests having kids in foster care bad for mothers” CBC News (November 4, 2017) online: <<https://www.cbc.ca/news/canada/manitoba/living-death-study-suggests-having-kids-in-foster-care-bad-for-mothers-1.4388115>>.

<sup>57</sup> Dubravka Simonovic, “States must combat domestic violence in the context of COVID-19 lockdowns” (Online statement, Geneva: March 27, 2020), online: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E>>.

<sup>58</sup> Native Women’s Association of Canada, “The Impacts of COVID-19 on Indigenous Women and Gender-Diverse People in Canada” Online Survey (June 3, 2020), online: <<https://www.nwac.ca/browse/>>.

<sup>59</sup> *Supra* note 8, *National Inquiry* at p. 54-54.

As noted by the Special Rapporteur in her 2019 report on Canada, only 6% of shelters for victims of abuse in Canada serve women and children in Indigenous communities.<sup>60</sup> This gap has created a crisis situation for many Indigenous women and their children and puts them at greater risk in this pandemic.<sup>61</sup>

## 2. Police Racism and Brutality, Sexualized Violence and Killings

The failure of state authorities to protect Indigenous women in Canada is well-documented.<sup>62</sup> The safety of Indigenous women and girls is further jeopardized by police as the perpetrators of racialized and sexualized violence, brutality, and killings.<sup>63</sup> Since the beginning of the pandemic, at least two Indigenous women and one Indigenous girl have been killed in interactions with the police including:

- Eishia Hudson;<sup>64</sup>
- Regis Korchinski-Paquet;<sup>65</sup> and

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<sup>60</sup> *Supra* note 42, *SRVAW 2019 Report on Canada* at p. 8.

<sup>61</sup> Note that also Pauktuutit, the organization representing Inuit women has long called on Canada to fund shelters and safe housing in the north without response.<sup>61</sup> Given their remoteness, emergency shelters are especially crucial, as they are often the only escape for women and girls from domestic or sexual abuse: Pauktuutit Inuit Women of Canada, “Pauktuutit Inuit Women of Canada urges Prime Minister to reconcile funding of Inuit shelters for women and children” News Release (June 2, 2020), online: <<https://www.pauktuutit.ca/news/pauktuutit-inuit-women-of-canada-urges-prime-minister-to-reconcile-funding-of-inuit-shelters-for-women-and-children/>>; Note that there is typo in this article: the federal government allocated \$10 million in funding for shelters for Indigenous women and girls, not \$100 million. See Canada, Status of Women Canada, *Supporting women’s shelters and sexual assault centres during COVID-19* (Ottawa: SWC, 2020), online: <<https://cfc-swc.gc.ca/fun-fin/shelters-refuges-en.html>>.

<sup>62</sup> *Supra* note 7, *CEDAW Report*; *Supra* note 8, *National Inquiry* at p. 54-54; *Supra* note 42, *SRVAW 2019 Report on Canada*, at p. 14; Jacques Viens, *Final Report: Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec* (2019), online:

<[https://www.cerp.gouv.qc.ca/fileadmin/Fichiers\\_clients/Rapport/Final\\_report.pdf](https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Final_report.pdf)>; Hon. Wally T. Oppal, *Forsaken: The Report of the Missing Women Commission of Inquiry (Executive Summary)*, (Victoria: 19 November, 2012), online: <<https://missingwomen.library.uvic.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>>.

<sup>63</sup> *Ibid*; See also Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (February 13, 2013), online:

<<https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>>; Human Rights Watch, *Canada: Police Fail Indigenous Women In Saskatchewan* (Saskatoon: June 19, 2017), online: <https://www.hrw.org/news/2017/06/19/canada-police-fail-indigenous-women-saskatchewan>; P. Palmater, “Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence Against Indigenous Women and Girls in the National Inquiry” (2016) 28:2 *Canadian Journal of Women and the Law* 253-284; The Canadian Press, “Indigenous women say they’re still afraid of the Sûreté du Québec”, *CTV News* (Montreal: October 17, 2019), online: <<https://montreal.ctvnews.ca/indigenous-women-say-they-re-still-afraid-of-the-s%C3%BBret%C3%A9-du-qu%C3%A9bec-1.4642629>>.

<sup>64</sup> On April 8 Eishia Hudson; a 16-year old First Nation girl living in Winnipeg, was shot and killed by Winnipeg Police after an alleged theft: Sarah Berman, “Winnipeg Police Killed Three Indigenous People in 10 Days” *Vice News* (April 22, 2020), online: <[https://www.vice.com/en\\_ca/article/n7jazx/winnipeg-police-killed-three-indigenous-people-in-10-days](https://www.vice.com/en_ca/article/n7jazx/winnipeg-police-killed-three-indigenous-people-in-10-days)>.

<sup>65</sup> On May 27, Regis Korchinski-Paquet; a 29-year-old Black-Indigenous women died after falling from her 24<sup>th</sup> floor balcony while she was alone in her apartment with Toronto police. Her mother had called the police to help de-escalate Regis from a mental health crisis: Bryan Aguilar, “Protesters in downtown Toronto demand answers in

- Chantel Moore.<sup>66</sup>

This is in addition to the killing of five Indigenous men and the ongoing brutalization of Indigenous peoples during the pandemic.<sup>67</sup>

This racialized and sexualized violence by police was noted by the Special Rapporteur on Violence Against Women in her 2019 visit to Canada who called for an independent review of police forces to investigate the “disproportionately high levels of racism, abuse and violence towards Indigenous women and girls.”<sup>68</sup>

### 3. Canada Deferred National Action Plan on Crisis of MMIWG2S+

In June 2019 the MMIWG National Inquiry found Canada guilty of historical and ongoing genocide, against Indigenous peoples generally, and specifically Indigenous women and girls.<sup>69</sup> Canada promised that within a year of these findings, it would release a plan responding to the National Inquiry’s Calls for Justice.<sup>70</sup> In May, the federal government announced that due to COVID-19 it would not release its national action plan;<sup>71</sup> the government did not commit to any future release date.

The crisis of MMIWG2S+ is well documented. Numerous UN expert mechanisms<sup>72</sup> and treaty bodies alongside the Inter-American Commission on Human Rights have acknowledged the crisis and made myriad recommendations to Canada to address it, including the key recommendation of developing a national action plan.<sup>73</sup>

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death of Regis Korchinski Paquet”, *CP 24* (May 30, 2020), online: <<https://www.cp24.com/news/protesters-in-downtown-toronto-demand-answers-in-death-of-regis-korchinski-paquet-1.4961615>>.

<sup>66</sup> On June 4<sup>th</sup> Chantel Moore; a 26-year-old woman from Tla-olqui-aht First Nation was shot by police in her home in New Brunswick, who had been called by her boyfriend to conduct a “wellness check” on her because he worried she was being harassed: Sarah Morin, “Chantel Moore’s family calls for justice, public inquiry during healing walk”, *CBC News* (June 13, 2020), online: <<https://www.cbc.ca/news/multi-lineup-listing/healing-walks-chantel-moore-1.5610194>>.

<sup>67</sup> Amanda Connolly, “RCMP defence of Chief Allan Adam’s arrest shows ‘pattern of behaviour’: Qualtrough”, *Global News* (June 14, 2020), online: <<https://globalnews.ca/news/7060131/rcmp-allan-adam-arrest/>>; Charlotte Morritt-Jacobs, “Dene man alleges RCMP beat him up day after Yellowknife anti-racism march”, *APTN News* (June 12, 2020), online: <<https://www.aptnnews.ca/national-news/dene-man-alleges-rcmp-beat-him-up-day-after-yellowknife-anti-racism-march/>>.

<sup>68</sup> *Supra* note 42, *SRVAW 2019 Report on Canada*, recommendation 96(z) at p. 20.

<sup>69</sup> *Supra* note 8, *National Inquiry*.

<sup>70</sup> Alex Ballingall, “Trudeau pledges to turn inquiry’s calls into Indigenous-led action”, *The Star* (June 3, 2019), online: <<https://www.thestar.com/news/canada/2019/06/03/all-canadians-have-a-role-to-play-in-ending-mmiwg-genocide-report-says.html>>.

<sup>71</sup> Olivia Stefanovich, “Ottawa delays release of national action plan on missing and murdered indigenous women”, *CBC News* (May 26, 2020), online: <<https://www.cbc.ca/news/politics/stefanovich-mmiwg-action-plan-delay-1.5583585>>.

<sup>72</sup> *Supra* note 42, *SRVAW 2019 Report on Canada* at p. 18.

<sup>73</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Calls for Justice* (Ottawa: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019) see Call for Justice 1.1 at p. 5.

- See Appendix A, Recommendations 12 through 20.

## IV. Pandemic Measures Used to Breach Indigenous Rights

### 1. Alberta Legislature Passed a Bill to Ban Pipeline Protests

UN IASG stated that it “condemns attacks on indigenous and human rights defenders and land and environmental defenders that are happening under the pretext of, or with the excuse of COVID-19 response.”<sup>74</sup> Alberta’s Energy Minister has publicly stated that the pandemic is a “good time to build pipelines” since the public health restrictions due to the pandemic will limit protests.<sup>75</sup>

In May 2020, the Alberta legislature passed the *Critical Infrastructure Defense Act* which is a direct attack on Indigenous and human rights land defenders under the guise of protecting “essential infrastructure from damage or interference caused by blockades”.<sup>76</sup> The bill prohibits protests blocking pipelines, oil sites, railways, and roads, at risk of fines up to \$25,000, or imprisonment.<sup>77</sup>

### 2. Refusal to Halt Pipelines and other Energy Projects

The Inter-American Commission on Human Rights has counselled North American states to “refrain from introducing legislation [...] or pursuing extractive projects in the territories of Indigenous peoples” during the pandemic.<sup>78</sup> State governments in Canada have ignored this call.

Canada and the British Columbia provincial government failed to obtain the free, prior and informed consent of Indigenous peoples impacted by the Coastal GasLink pipeline, Trans Mountain pipeline, and Site C Dam.<sup>79</sup> The UN Committee on the Elimination of Racial

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<sup>74</sup> *Supra* note 10, *UNIASGII COVID Guidance Note*, p. 3.

<sup>75</sup> Canadian Press, “COVID-19 crowd limits make it a ‘great time to be building a pipeline’: Alberta minister”, *Calgary Herald* (May 25, 2020), online: <<https://calgaryherald.com/business/energy/covid-19-crowd-limits-make-it-a-great-time-to-be-building-a-pipeline-alberta-minister>>.

<sup>76</sup> Alberta, Bill 1, *Critical Infrastructure Defence Act*, 2<sup>nd</sup> Sess, 30<sup>th</sup> Leg, 2020 (royally assented 17 June, 2020), online: <[https://docs.assembly.ab.ca/LADDAR\\_files/docs/bills/bill/legislature\\_30/session\\_2/20200225\\_bill-001.pdf](https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_30/session_2/20200225_bill-001.pdf)>; Matthew Black, “Alberta bill targeting blockade protesters passed into law” *CTV News* (Edmonton: June 17, 2020), online: <<https://edmonton.ctvnews.ca/alberta-bill-targeting-blockade-protesters-passed-into-law-1.4988429>>.

<sup>77</sup> *Ibid.*

<sup>78</sup> Inter-American Commission on Human Rights, *Pandemic and Human Rights in the Americas: Resolution 1/2020* (Adopted by the IACHR on April 10, 2020), recommendation 56 at p. 15 [*IACHR Resolution 1/2020*]

<sup>79</sup> Note also that immediately prior to the pandemic, United Nations Committee on the Elimination of Racial Discrimination (UNCERD) called on Canada to immediately suspend work on the Coastal GasLink pipeline, the Trans Mountain pipeline and the Site C dam until they had the free, prior and informed consent of the impacted Indigenous peoples, in accordance with their obligations under the UN Declaration on the Rights of Indigenous

Discrimination (CERD) called on Canada to halt these projects as a result.<sup>80</sup> Neither government has halted these projects in response to CERD or COVID-19.

In April 2020, the Alberta Premier made a surprise announcement that the province would revive the Keystone XL pipeline.<sup>81</sup> This announcement was made without Indigenous consent and during a time when a prohibition on public gatherings barred protest demonstrations due to the pandemic.

Federal and provincial governments have also suspended numerous environmental protection measures since the pandemic.<sup>82</sup> Ontario, for example, suspended environmental protection oversight rules in light of the pandemic, allowing the province to carry out projects which risk significantly impacting the environment without consultation or public notice.<sup>83</sup>

### 3. Extractive Industry “Man Camps”

Federal and provincial governments’ refusal to shut down energy project operations during the pandemic means that work sites, commonly referred to as “man camps”, continue to operate and put Indigenous communities at risk of infection<sup>84</sup> and Indigenous women and girls at heightened risk of violence and exploitation.<sup>85</sup>

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Peoples (“UNDRIP”). Canada has yet to comply. Pamela Palmater, “Under cover of COVID-19, rule of law falters”, *Lawyers Daily* (April 23, 2020), online: <<https://www.thelawyersdaily.ca/articles/18734/under-cover-of-covid-19-rule-of-law-falters-pamela-palmater?category=opinion>>.

<sup>80</sup> CEDAW, *Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure*, Decision 1(100), Canada, (19 October, 2019), online: <[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_EWU\\_CAN\\_9026\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_EWU_CAN_9026_E.pdf)>.

<sup>81</sup> Tzeporah Berman, “Kenney’s billions for Keystone XL is ballast for a sinking ship”, *National Observer* (April 7, 2020), online: <<https://www.nationalobserver.com/2020/04/07/opinion/kenneys-billions-keystone-xl-ballast-sinking-ship>>.

<sup>82</sup> Emma McIntosh, “Here’s every environmental protection in Canada that has been suspended, delayed and cancelled during COVID-19”, *National Observer* (June 3, 2020), online: <<https://www.nationalobserver.com/2020/06/03/news/heres-every-environmental-protection-canada-has-been-suspended-delayed-and-cancelled>>.

<sup>83</sup> Alberta also suspended environmental reporting requirements stating the pandemic would cause undue hardship to the extractive industry. These changes mean extractive companies will not be required to report on their compliance with the *Environmental Protection and Enhancement Act*, the *Water Act* and the *Public Lands Act*, including oil spills. *Ibid*; Pamela Palmater, “Under cover of COVID-19, rule of law falters”, *The Lawyer’s Daily* (April 23, 2020), online: <<https://www.thelawyersdaily.ca/articles/18734/under-cover-of-covid-19-rule-of-law-falters-pamela-palmater>>.

<sup>84</sup> Energy Mix, “Tar Sands/ Oil Sands ‘Man Camp’ Drives COVID-19 Spread to Five Provinces”, *Energy Mix* (May 18, 2020), online: <<https://theenergymix.com/2020/05/18/tar-sands-oil-sands-man-camp-drives-covid-19-spread-to-five-provinces/>>; Amanda Follet Hosgood, “BC’s Work Camps Stay Open Despite Pandemic Risk”, *The Tyee* (March 24, 2020), online: <<https://thetyee.ca/News/2020/03/24/BC-Resource-Workers-Could-Overwhelm-Northern-Hospitals/>>; Sarah Cox, “Former chief medical officer urges BC to shut down industrial work camps during coronavirus pandemic”, *The Narwhal* (March 31, 2020), online: <<https://thenarwhal.ca/former-chief-medical-officer-urges-b-c-to-shut-industrial-work-camps-during-coronavirus-pandemic/>>.

<sup>85</sup> Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia* (2016), online:



The MMIWG National Inquiry Final Report set out extensive findings – including by former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, that extractive industry and man camps are linked to increased levels of violence against Indigenous women and girls.<sup>86</sup>

Man camps also increase the risk of infection in remote First Nations communities as they bring large influxes of workers from all over Canada into the area. Leaders of the Tataskweyak Cree Nation have told Manitoba Hydro to halt construction of the Keeyask Hydro project as a result.<sup>87</sup> There have also been numerous sexual assault claims of Indigenous women by workers at Keeyask.<sup>88</sup>

Similar calls to shut down man camps have been made by Indigenous women community groups across Canada, including Tiny House Warriors, as well as Wet’suwet’en Hereditary leaders, Union of BC Indian Chiefs and others.<sup>89</sup>

- See Appendix A, recommendations 21 through 25.

## V. Inadequacy of Federal and Provincial COVID-19 Response Measures

### 1. No Decision-Making Voice in Pandemic Plans

The Inter-American Human Rights Commission emphasizes the importance of ensuring that “women hold decision-making positions” in COVID-19 response-planning efforts,<sup>90</sup> and the UN Department of Economic and Social Affairs called on governments to “ensure that indigenous women are effectively engaged in decision-making related to COVID-19”.<sup>91</sup> Canada has not sought substantive input from Indigenous women experts, advocates and leaders in pandemic-response plans, nor have Indigenous women be part of critical decision-making around funding and measures.

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<<https://www.amnesty.ca/sites/amnesty/files/Out%20of%20Sight%20Out%20of%20Mind%20ES%20FINAL%20EN%20CDA.pdf>>.

<sup>86</sup> *Supra* note 8, *National Inquiry*, p. 585.

<sup>87</sup> Tauria Izri, “Protesters rally in support of Keeyask hydro project blockade”, *CTV News* (Winnipeg: May 20, 2020), online: <<https://winnipeg.ctvnews.ca/protestors-rally-in-support-of-keeyask-hydro-project-blockade-1.4947876>>.

<sup>88</sup> Marina von Stackelberg, “9 cases of sexual assault investigated at Keeyask dam site since 2015 ‘tip of the iceberg,’ says prof”, *CBC News* (January 26, 2019), online: <<https://www.cbc.ca/news/canada/manitoba/keeyask-sexual-assaults-1.4994561>>.

<sup>89</sup> Coast Protectors, News Release, “UBCIC Joins the Fight Against Kinder Morgan Man Camps” (March 2, 2018), online: <[https://www.coastprotectors.ca/ubcic\\_joins\\_the\\_fight\\_against\\_kinder\\_morgan\\_man\\_camps](https://www.coastprotectors.ca/ubcic_joins_the_fight_against_kinder_morgan_man_camps)>; Tiny House Warriors, News Release, “Shut Down the Man Camps” (April 1, 2020), online: <<http://www.tinyhousewarriors.com/2020/04/shut-down-the-man-camps/>>.

<sup>90</sup> *Supra* note 76, *IACHR Resolution 1/2020* at p. 14.

<sup>91</sup> *Supra* note 10, *UNESA COVID Considerations* at p. 1.



## 2. Federal Pandemic Response Funding for Indigenous Peoples Inadequate

Canada allocated \$305 million in pandemic-response funding to Indigenous communities – of which \$215 million is allocated to First Nations, \$45 million for Inuit, \$30 million for Métis communities, and a total of \$90 million for Indigenous organizations and communities providing services to Indigenous peoples in urban centers or off reserve.<sup>92</sup>

This may seem significant, however, this funding amounts to less than 0.5% of the pandemic measures funding.<sup>93</sup> By population alone, Indigenous funding should have been more than five billion dollars.<sup>94</sup> Addressing water and sanitation issues in First Nations will cost billions of dollars.<sup>95</sup> In this context, the \$305 million for all First Nations, Metis and Inuit, plus the recent \$75 million for Indigenous peoples off-reserve does not address their specific and elevated needs.<sup>96</sup>

The Canada COVID-19 response package also included \$50 million to support shelters for women facing sexual and other forms of gender-based violence. This is woefully inadequate given that only 6% of shelters for victims of abuse are located in Indigenous communities.<sup>97</sup> Given the increased risk of the coronavirus in institutional settings, what is really needed is safe, adequate housing for Indigenous women.

In April, Canada announced \$10 million of additional funding specifically for shelters on reserves and in the Yukon to support women victims of domestic violence. However, given that only a fraction of Indigenous women will benefit from the \$50 million allocated to women generally, and their high need for these supports, \$10 million is not nearly enough to account for the existing gap and overall need. Further, there has been no funding commitment to serve Inuit women escaping violence in Nunavut and in the Inuvialuit, Nunavik and Nunatsiavut regions, as well as in Ottawa, which has the highest urban Inuit population in Canada.<sup>98</sup>

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<sup>92</sup> Canada, Indigenous Services Canada, *Addressing urgent needs in Indigenous communities related to COVID-19* (Ottawa: ISC, 2020), online: <<https://www.canada.ca/en/indigenous-services-canada/news/2020/03/addressing-urgent-needs-in-indigenous-communities-related-to-covid-19.html>>.

<sup>93</sup> Pamela Palmater, “Federal pandemic funds for First Nations woefully inadequate” *Rabble* (Toronto: March 27, 2020), online: <<https://rabble.ca/blogs/bloggers/views-expressed/2020/03/federal-pandemic-funds-first-nations-woefully-inadequate>>.

<sup>94</sup> Indigenous people represent 5% of the overall Canadian population: *Statistics Canada, Aboriginal peoples in Canada: Key results from the 2016 Census* (Ottawa: Statistics Canada, 2017), online: <<https://www150.statcan.gc.ca/n1/en/daily-quotidien/171025/dq171025a-eng.pdf?st=z6JF0FZe>>.

<sup>95</sup> Neegan Burnside Ltd., *National Assessment of First Nations Water and Wastewater Systems: National Roll-UP Report* (Ottawa: Neegan Burnside, Ltd., 2011), online: <[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/enr\\_wtr\\_nawws\\_rurnat\\_rurnat\\_1313761126676\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/enr_wtr_nawws_rurnat_rurnat_1313761126676_eng.pdf)>.

<sup>96</sup> Government of Canada, “Indigenous Community Support Fund” (Ottawa: GC, 2020), online: <<https://www.sac-isc.gc.ca/eng/1585189335380/1585189357198>>.

<sup>97</sup> *Supra* note 42, *SRVAW 2019 Report on Canada* at p. 8.

<sup>98</sup> Pauktuutit Inuit Women of Canada, “Pauktuutit Inuit Women of Canada urges Prime Minister to reconcile funding of Inuit shelters for women and children”, News Release ((June 2, 2020), online: <<https://www.pauktuutit.ca/news/pauktuutit-inuit-women-of-canada-urges-prime-minister-to-reconcile-funding-of-inuit-shelters-for-women-and-children/>>.

### 3. Race and Sex Disaggregated Data Collection by Governments and Agencies Needed

Several international bodies have stressed the importance of states collecting and making available disaggregated data on Indigenous peoples, including on rates of infection [...] and gender-based violence.<sup>99</sup> The UN Inter-Agency Support Group on Indigenous Issues has also cautioned that “the lack of quantitative and qualitative data prevents an accurate diagnosis on the impact of the pandemic on indigenous peoples and hinders the formulation of an adequate response.”<sup>100</sup>

Data collection practices across all levels of government in Canada have long failed to collect race and gender disaggregated data.<sup>101</sup> With the exception of Manitoba, no province has been consistently collecting comprehensive race and gender disaggregated data on COVID-19.<sup>102</sup>

Indigenous Services Canada (ISC) does not report incidence of infection on all Indigenous communities. ISC reporting is inconsistent with First Nations reported data, which shows that the incidence of COVID-19 infection is more than double the ISC numbers. For example, as of May 10, 2020 First Nations reported data counted 465 cases versus 175 from ISC.<sup>103</sup>

The dearth of data prevents us from knowing the precise impact of COVID-19 on Indigenous women and girls. However, in Manitoba, the only jurisdiction with disaggregated COVID-19 data, women make up more than 80% of First Nations people off-reserve who have contracted the virus.<sup>104</sup>

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<sup>99</sup> *Supra* note 10, *UNIASGII COVID Guidance* at p. 2; *UNESA COVID Considerations* at p. 2; See also *IACHR Resolution 1/2020*, *supra* note 76 at p. 18.

<sup>100</sup> *Ibid*, *UNIASGII COVID Guidance Note*.

<sup>101</sup> We note that numerous UN human rights treaty bodies have long called on Canada to improve its data collection with regard to Indigenous peoples, especially women; as a critical part of tracking and addressing the socio-economic conditions caused by Canada’s human rights violations: *CEDAW Report*, *supra* note 7 at p. 55; UN Human Rights Council, “Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and State response, UNGAOR, 7th Sess, UN Doc. A/HRC/7/6 (2008) at para 30, online:

<<https://documentsddsny.un.org/doc/UNDOC/GEN/G08/104/47/PDF/G0810447.pdf?OpenElement>>. UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 9:

Statistical data concerning the situation of women, CEDAW, 8th Sess, UN Doc A/44/28 (1989), online:

<[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/A\\_44\\_38\\_3724\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_44_38_3724_E.pdf)> UN

General Assembly, Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples: resolution adopted by the General Assembly, UNGAOR, 69th Sess, UN Doc A/RES/69/2, online: <<https://undocs.org/A/RES/69/2>>.

<sup>102</sup> Colin Perkel, “Ontario mulls collection of race-based coronavirus data; some argue it’s essential” (Online: Global News, June 2, 2020) <<https://globalnews.ca/news/7018459/ontario-coronavirus-race-based-data/>>.

<sup>103</sup> Courtney Skye, “Colonialism of the Curve: Indigenous Communities & Bad Covid Data” (Toronto: Yellowhead Institute, May 12, 2020) <<https://yellowheadinstitute.org/2020/05/12/colonialism-of-the-curve-indigenous-communities-and-bad-covid-data/#>>.

<sup>104</sup> Assembly of Manitoba Chiefs, “Manitoba First Nations COVID-19 Pandemic Response Coordination Team PRCT Bulletin” (Winnipeg: Assembly of Manitoba Chiefs, May 15, 2020).

- See Appendix A, Recommendations 26 through 29.

## VI. Conclusion

CESCR has highlighted states' responsibility to mitigate and prevent the "profoundly negative impacts" of this pandemic on the most vulnerable groups, including Indigenous peoples.<sup>105</sup> Indigenous women and girls have been identified by several international bodies as being among those most at risk during this pandemic.<sup>106</sup>

While Indigenous women and girls are in urgent need of emergency relief in the short term and structural change in the long-term recovery plan, the overall emergency funding allotted to Indigenous peoples by the Canadian government is a dismal 0.5%, and Indigenous women and their organizations have not been invited to the table to develop a long-term COVID-19 recovery plan. This pandemic crisis for Indigenous women and girls is unfolding within the larger genocide crisis noted by the National Inquiry for which there is no transitional justice plan to address.

Canada needs to ensure its pandemic-response plan is informed by a human rights, anti-colonial and gendered lens. The longstanding human rights violations of Indigenous women and girls which the COVID-19 pandemic has exacerbated must be remedied. Transformative structural change is required to ensure Indigenous women's rights are respected and protected.

For a list of measures which would need to be included in a feminist COVID-19 response-plan, see our recommendations in Appendix A.

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<sup>105</sup> UN Committee on Economic, Social and Cultural Rights, "Statement on the coronavirus disease (COVID-19) pandemic and economic, social, and cultural rights" (17 April 2020) at p. 1.

<sup>106</sup> *Supra* note 10.

## Appendix A – Recommendations

### II. Deteriorating Socio-Economic Conditions Increase Risk of Infection

1. Immediately provide adequate rights and needs-based funding for all social programs for First Nation women and children on and off-reserve; Inuit women and children in their north communities and urban areas; and for Metis women and children; at least on par with provincial funding levels, taking into account significant additional investments which will be required to address the housing and education backlogs, long-standing infrastructure deficiencies, and cumulative social and health problems that developed from lack of funding, with special attention to the particular disadvantages faced by Indigenous women and girls.
2. Create joint emergency task force(s) in partnership with, and with adequate funding to support, First Nations, Indigenous women’s groups, organizations, and experts to create a strategic plan to address long-standing urgent crises such as emergency management, children in care, over-imprisonment of Indigenous women, and high suicide rates.
3. Implement the recommendations of the Auditor General of Canada, Truth and Reconciliation Commission, UN Special Rapporteur on rights of Indigenous peoples, the CEDAW Committee and other United Nations treaty bodies to address the socio-economic crises faced by Indigenous women and girls.
4. That the federal and municipal governments make available targeted housing for Indigenous women and children both within and outside Indigenous communities to ensure their health, safety, and well-being.
5. Expedited Indian registration for anyone newly entitled to registration under *Bill S-3* so that they can access critical uninsured health benefits, prioritizing families with children;
6. That the federal government allocate emergency support funding to allow Indigenous women and their families to buy sufficient food, water and medical supplies during this period of self-isolation regardless of where they live;
7. That the federal government ensure that all Indigenous communities, and especially those which are the least resourced to manage serious outbreaks have sufficient PPE and testing supplies;
8. That federal and provincial governments develop and implement a targeted decarceration plan for Indigenous women prisoners and Indigenous girls in youth corrections with a view to transitioning all Indigenous women and girls out of prison, with corresponding post-release supports. Our pandemic plan would prioritize the immediate release of Indigenous women and girls as follows:

- a) prisoners who have already been granted conditional release by the Parole Board of Canada;
  - b) prisoners who are classified as minimum security;
  - c) prisoners pursuant to agreements on their transfer or release into the care and custody of Indigenous communities under sections 81 or 84 of the *Indian Act*; and
  - d) prisoners vulnerable to COVID-19, including but not limited to:
    - i. anyone over 50 years old;
    - ii. those who are pregnant;
    - iii. immunocompromised persons, or those who have a pre-existing condition that renders them at high risk of dying from COVID-19;
    - iv. those living with mental health conditions, including dementia;
9. That the post-release supports set out in the decarceration plan for Indigenous women and girls under (10) include:
- e) releasing prisoners to families, communities or to non-governmental organizations, with fully funded housing, health and educational services.
  - f) Releasing ill, elderly or minimum-security individuals to self-isolate and then shelter in place in the care of family or community groups represents little, if any risk to public safety;
10. That for the Indigenous women and girls who are imprisoned during this transition to decarceration, the federal government ensure public health officials conduct in-person independent reviews on an ongoing basis to certify whether CSC adheres to physical distancing and hygiene directives for the remaining durations of the pandemic.
11. That federal and provincial governments launch independent reviews of the respective carceral institutions under their jurisdictions, with Indigenous women as part of the reviews, to investigate the disproportionately high levels of racism, harassment, brutality, exploitation, sexualized violence and deaths of Indigenous women and girls, as called for by the Special Rapporteur on Violence Against Women; and

### **III. Gendered Violence, Exploitation, Disappearances and Murders of Indigenous Women and Girls**

12. That the federal government work with Indigenous women experts, advocates, and leaders to immediately develop and implement a transitional justice plan aimed at ending genocide in Canada and eradicating the crisis of missing and murdered Indigenous women and girls in Canada, with independent international oversight from the UN and/or IACHR;
13. That the federal government allocate funding for infrastructure to maintain and expand emergency domestic abuse and rape crisis shelters, as well as pandemic safe housing for Indigenous women and girls so that they are not trapped by the virus into staying in dangerous situations;

14. That the federal government allocate emergency funding for Indigenous women, communities and advocacy organizations who directly support Indigenous women who have had their children apprehended into foster care to reunite them with their children, together with added supports and protections these children and their families will need to stay healthy and safe during the pandemic and beyond;
15. That the federal government launch an independent review of the Royal Mounted Police, with Indigenous women as part of the review, to investigate systemic racism, brutality, exploitation, sexualized violence and killings of Indigenous women and girls in the RCMP as called for by the UN Special Rapporteur on Violence Against Women, its Causes and Consequences;
16. That federal and provincial governments launch independent reviews of the respective police forces under their jurisdictions, with Indigenous women as part of the reviews, to investigate the disproportionately high levels of racism, brutality, exploitation, sexualized violence and killings of Indigenous women and girls, as called for by the Special Rapporteur on Violence Against Women;
17. That all federal, provincial, municipal and Indigenous police agencies legislate zero tolerance for police racism, profiling, exploitation, harassment, excessive use of force and brutality, and sexualized violence against Indigenous peoples with a specific focus on Indigenous women and girls;
18. That all federal, provincial, municipal and Indigenous police agencies amend or repeal any and all legislation that provides for any level of immunity for police racism, profiling, exploitation, harassment, excessive use of force and brutality, and sexualized violence against Indigenous peoples with a specific focus on Indigenous women and girls;
19. That all federal, provincial, municipal and Indigenous police agencies legislate open access to police disciplinary records, investigations, statistics and other evidence in relation to police racism, profiling, exploitation, harassment, excessive use of force and brutality, and sexualized violence against Indigenous peoples with a specific focus on Indigenous women and girls;
20. That the federal government implement all outstanding recommendations from the Committee on the Elimination of Discrimination against Women endorsed by the Ms. Simonovic, Special Rapporteur on Violence Against Women in her 2019 report on Canada.<sup>107</sup>

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<sup>107</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, by Dubravka Simonovic, GE.19-1903, UNOHCHR 41<sup>st</sup> Sess, UN Doc A/HRC/41/42/Add.1 (2019) online: <<https://digitallibrary.un.org/record/1641160?ln=en>> at p. 18-21.

#### **IV. Pandemic Measures Used to Breach Indigenous Rights**

21. That federal and provincial governments refrain from pursuing extractive projects during the pandemic as called for by CERD in 2019 and then called for by the Inter-American Commission on Human Rights, especially where they have not obtained the free, prior, and informed consent of the all impacted Indigenous peoples, including but not limited to the following projects:
  - a) The Northern Gateway Pipeline;
  - b) The Coastal Gaslink Pipeline;
  - c) Site C Dam; and
  - d) Keystone XL Pipeline.
22. Further to (21) that the federal and provincial governments see to the immediate removal of all extractive industry man-camps located at or near Indigenous communities to reduce the rates of violence for Indigenous women and girls, and the risks of infections of COVID-19 their communities from mass gatherings of workers, in accordance with the calls Indigenous women and their communities;
23. Consistent with call from the Inter-American Commission on Human Rights to refrain from introducing legislation threatening Indigenous rights during the pandemic, that federal and provincial governments reverse suspensions of environmental protections during the pandemic, in particular those which relate to industry reporting requirements; and
24. That the Alberta government abandon its flagrantly unconstitutional attempt to ban pipeline protests.
25. Work in partnership with First Nations, Inuit and Metis, Indigenous women's groups, organizations and experts to develop legislation, policy and funding support mechanisms to fully implement UNDRIP with a special and urgent focus on extractive activities taking place in Canada and the need for free, informed and prior consent, special protections for Indigenous women and girls, and funding for suitable research, legal support and Indigenous institutions to fully and properly engage in ongoing consultations and decision-making, before allowing any further activity on or near Indigenous lands.

#### **V. Inadequacy of Pandemic Response Measures**

26. That the federal government work jointly with Indigenous women experts, advocates and leaders in all decision-making related to COVID-19 response measures, including in dealing with the socio-economic effects of lockdowns, physical distancing and other mitigating efforts which disproportionately put them at greater risk;

27. That all levels of government immediately implement race and gender data disaggregation collection measures so that they can determine more precisely who is being impacted by the COVID-19 pandemic and respond accordingly, as called for by the Canadian public, the Inter-American Commission on Human Rights, The Inter-Agency Support Group on Indigenous Issues, and the Department of Economic and Social Affairs;
28. That all levels of government immediately implement race and gender data disaggregation collection measures for all state governments, institutions, agencies and services, including policing and corrections, and that this data be available to Indigenous women and their communities;
29. That the federal government immediately increase pandemic funding in line with the population numbers of Indigenous peoples, their chronic, crisis level impoverished socio-economic conditions and lack of infrastructure pre-pandemic, the additional needs of Indigenous women and girls due to Canada's ongoing genocide against Indigenous women and girls, resulting in their high rates of abuse, neglect, exploitation, sexualized violence, disappearances and murders, as well as capacity-building funds for Indigenous women experts, advocacy groups, and community groups who provide critical services but have lacked funding.
30. That the federal government fully implement all of the recommendations of the First Nations Child and Family Caring Society, and in particular the Spirit Bear Plan.