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British Columbia Assembly of First Nations' Submission to the Special Rapporteur on the rights of Indigenous peoples

Impact of COVID-19 on Indigenous peoples

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Background

a) The BC Declaration on the Rights of Indigenous Peoples Act

In November 2019, British Columbia (BC) became the first province in Canada and the first region in the world to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into legislation. The Declaration Act in BC requires that the province of BC align provincial law with the minimum standards set out by UNDRIP, including outstanding legislation and future legislation. Canada has also made a commitment to implement UNDRIP at the federal level.

b) The Truth and Reconciliation Commission (TRC) Calls to Action

For over 150 years, residential schools operated in Canada. Over 150,000 children attended these schools. Many never returned. Often underfunded and overcrowded, these schools were used as a tool of assimilation and genocide by the Canadian state and churches. Thousands of students suffered physical and sexual abuse. All suffered from loneliness and a longing to be home with their families. The damages inflicted by these schools continue to this day.

In 2009, the Truth and Reconciliation Commission of Canada began a multi-year process to listen to Survivors, communities and others affected by the Residential School system. In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission made 94 Calls to Action.

c) The Ten Principles

According to Canada, these Principles are a necessary starting point for the Crown to engage in partnership, and a significant move away from the status quo to a fundamental change in the relationship with Indigenous peoples with an end goal of implementing UNDRIP into federal legislation.

The Government of Canada recognizes that:

1. All relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.
2. Reconciliation is a fundamental purpose of section 35 of the Constitution Act, 1982.
3. The honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.
4. Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.
5. Treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.
6. Meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.
7. Respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.

8. Reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.
9. Reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.
10. A distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.

d) The Missing and Murder Indigenous Women, Girls and 2-Spirit People Inquiry and Calls to Justice

The National Inquiry's Final Report reveals that persistent and deliberate human and Indigenous rights violations and abuses are the root cause behind Canada's staggering rates of violence against Indigenous women, girls and 2SLGBTQIA people. Testimony from family members and survivors of violence spoke about a surrounding context marked by multigenerational and intergenerational trauma and marginalization in the form of poverty, insecure housing or homelessness and barriers to education, employment, health care and cultural support. The Final Report delivers 231 individual Calls for Justice directed at governments, institutions, social service providers, industries and all Canadians.

Section 1: Economic Impacts

a) Vulnerability of First Nations communities and businesses to economic shocks

Prior to the COVID-19 pandemic, First Nations communities and people were marginalized in the economy. Circumstances imposed by ~~colonization~~ colonized policies, law and administrative actions that inhibit Indigenous economic participation include:

- Failure of the crown to fulfil the constitutional duty to consult and accommodate First Nations rights, titles and interests, especially the inescapable economic aspect of such rights;
- Exclusion from the resource economy;
- Lack of significant retained earnings;
- Barriers to accessing equity, credit and capital; based on restrictive securitization elements of the Indian Act;
- Lack of internet and telecommunications connectivity and other vital infrastructure;
- Racial discrimination and harmful stereotypes, including the interpretation that lack of participation is because First Nations people are ~~not interested in~~ against economic development not because there are institutional barriers to such participation;
- Lower levels of education and training;
- Access to resources; and
- Climate change.

These conditions, combined with COVID-19 exacerbated negative economic outcomes for First Nations. Economic recovery is arguably being placed ahead of First Nations reconciliation, First Nations rights are

[being justifiably infringed to restart resource projects and/or economic stimulus overlooks First Nations participation being a core investment.](#)

First Nations in BC reported heightened levels of food insecurity, unemployment and huge financial losses for businesses. Some First Nations-owned businesses, especially those in the tourism and fisheries industries only operate seasonally in the warmer months, which coincided with the pandemic's arrival to the province. Many First Nations businesses will not be able to survive the impending recession imposed by COVID-19.

Additionally, First Nations leaders in BC expressed their concern regarding man camps in their territories that are used to house workers on major natural resource projects. These projects are usually in remote or isolated locations where access to healthcare is limited; some Chiefs called for the closure of these sites in order to mitigate the risk of an outbreak in communities with already strained health resources that should be reserved for locals. Action was not taken on this front in response to Indigenous leadership's calls for it. Some lobbyists for potential major projects in the province also pushed for the federal government to delay their commitment to implementing UNDRIP in order to expedite projects without engaging with Rights and Title holders.

b) Lack of engagement on COVID-19 related economic relief packages and recovery

In response to the widespread economic devastation brought on by COVID-19, the federal government designed an Emergency Relief Plan, meant to help Canadian individuals and businesses survive during the current volatile situation. This plan included provisions for Indigenous businesses. However, when accounting for Indigenous population and number of businesses relative to non-Indigenous population and businesses, Indigenous businesses received significantly less proportional funding than non-Indigenous businesses. This shortfall does not ~~even~~ take into the consideration the economic disadvantages that First Nations face.

The inadequacy of federal funding for Indigenous businesses can be attributed to a lack of engagement with First Nations and First Nations organizations that would have been able to provide important, accurate information and negotiate a sufficient funding package. The federal government's failure to engage on this front, and instead making decisions for self-determining nations, does not reflect the intent to implement the UNDRIP, nor does it exemplify using the Ten Principles to respect the Crown's relationship with Indigenous people, namely, principles 1, 6, and 8.

To date, the province of BC has created at least one table in order to plan for economic recovery from COVID-19. Despite the Declaration Act passing in late 2019, dismal First Nations representation and engagement has occurred on the economic recovery front. BC AFN is advocating for increased First Nations participation in this government process in what could be a redefining moment in history for First Nations economic development. Failure to do so on the government's part will result in worse outcomes for First Nations people, increased tension in governmental relations and possibly force First Nations into unsatisfactory industry partnerships out of financial necessity. [Alternatively, direct engagement with BC First Nations on economic recovery can ensure that the economic rights are](#)

properly accommodated; that First Nations are active and constructive role players in stimulating the economy and ensure that First Nations are capable of reinvesting in local economies.

Section 2: Fisheries Impacts

- a) Priority access- Food, social and ceremonial purposes; *Sparrow* Decision and Section 35 rights

As mentioned in the above section, food security became a priority area of concern for First Nation communities in BC when COVID-19 restrictions were introduced and as economic shocks affected both employment and supply chains. In Canada, as per Section 35 of the *Constitution Act, (1982)*, and as demonstrated the 1990 Sparrow Decision, First Nations people have a constitutionally protected right to fishing, and access to fishing for food, social, and ceremonial (FSC) purposes supersedes all other fishing interests with the exception of conservation.

First Nations in BC and across Canada called on the Minister of the Department of Fisheries and Oceans to delay or heavily restrict commercial and recreational fishing seasons to allow for First Nations people to fully exercise their right to FSC fisheries without potentially harming already struggling fish populations. The Minister did not act on this and only some commercial fishing activities were delayed, but ~~it was~~ not in order to uphold FSC rights and ensure that food security measures could be taken by First Nations prior to opening commercial fisheries for the season. First Nations in Canada are still pushing the federal and provincial governments to implement Sparrow 30 years after the decision.

- b) Inadequate funding for First Nations fishers

Two relief funds were released for fisheries in the country but failed to address First Nations' needs. One fund addressed the need to process and store surpluses of fish while buyers such as restaurants are unable to purchase fish. The way in which this fund is structured gives advantage to large scale, commercial fisheries who already ~~have had~~ storing and processing infrastructure but needed enhanced capacity in the face of plunging demand for fish.

The second fund was geared towards fish harvesters but required that the fisher be a registered business and must have earned over \$5000 in the previous year. Many First Nations fishers are independent operators and do not have business licenses, making it difficult to access the fund. Additionally, fishers must prove that they have ~~reduced their catch by 75%~~ experienced income declines of greater than 25% from the average of the previous year and larger two years. Larger fisheries with economies of scale are expected to be more competitive in likely to meet this process threshold, receiving more of the funding, as compared to small self-employed Indigenous fish harvesters who are disproportionately harmed by smaller drop in income.

These inadequate funding measures for Indigenous fisheries come alongside billions of dollars in controversial government bailouts of the oil and gas industry, which, as addressed previously, contributes to violence against Indigenous women and girls through mancamps, contributes to environmental degradation and impacts on fisheries, and has the potential to increase risk of COVID-19 transmission as infrastructure work accelerates during the pandemic.

[KM1]: I updated this information based on the following webpage: <https://www.dfo-mpo.gc.ca/co/vid19/industry-industrie/index-eng.html>

- c) Repercussions for community, economic and cultural wellbeing including racially-motivated harassment on waters

Considering the geography of BC as a coastal province, fishing provides First Nations with a base source of income to supplement community programming, services, infrastructure and operations. Without this income, the already volatile financial position of most First Nations that rely on fishing activity only stands to worsen. Accounting for the inadequate funding provided to First Nation communities, especially in comparison with non-Indigenous Canadians, this loss in revenue could be devastating to housing projects, food security provisions, mental health and wellness services, among other crucial community needs.

BC AFN Chiefs reported that their members have been facing higher levels of racially-motivated aggression from non-Indigenous fishers on the water in recent months. Additionally, several instances of conservation officers charging First Nations fishers with illegal fishing occurred during COVID-19 restrictions despite the FSC fishing rights that First Nations people in Canada have. These charges are just one example of how the systemically racist Canadian fisheries management regime seeks only to enhance economically viable forms of fishing (sport, recreation and commercial) and not to uphold the [constitutionally protected](#) rights of Indigenous peoples in the country.

Section 3: Justice and Missing and Murdered Indigenous Women, Girls and 2-Spirit People (MMIWG2S)

- a) Increased domestic violence as a result of lockdowns

As per the Final Report of the MMIWG2S [Report National Inquiry](#), Indigenous women, girls and 2-Spirited people face a genocide in Canada. When COVID-19 restrictions were enforced, gendered violence increased. ~~This~~ [First Nations and advocacy groups predicted this](#) jump in domestic violence ~~was predicted~~; however, the Province of BC and the federal government did not act proactively or holistically in order to mitigate these anticipated consequences of COVID-19 restrictions. Most of the initiatives that were implemented were in urban centres ~~(e.g. where,~~ [neglecting the already greater need of](#) First Nations ~~are not)~~ [women, girls and 2-Spirit living in rural areas and on reserves](#). Lack of infrastructure and capacity in First Nations [and well-founded fear of calling the police due to systemic racism and police brutality](#), in combination with the already disproportionately high rates of violence against Indigenous women, girls and 2-~~spirit~~ [Spirit](#) people means that ~~this demographic does~~ [these individuals do](#) not have [the](#) resources ~~needed~~ [they need](#) to escape ~~the~~ [exacerbated violence during the pandemic](#).

- b) Delayed MMIWG2S Action Plan

On June 3rd 2019, the MMIWG2S Final Report was released and the Minister of Crown-Indigenous Relations and Northern Affairs Canada committed to having an Action Plan completed within one year. A year later, the Minister announced that the Action Plan would be delayed, sparking outrage ~~across~~ [among](#) the country's First Nations' communities and advocates. As demonstrated by the above section, now more than ever, an action plan to combat the genocide of Indigenous women, girls and

2-spirit people is needed. The Minister cited the pandemic as the reason that the Action Plan ~~can-~~
~~not~~cannot be developed at this time, despite organizations, businesses and governments finding ways to operate within COVID-19 restrictions. Delaying the Action Plan and using the pandemic as an excuse is a morally repugnant and life-threatening decision made by the Minister on this matter.

c) Police ~~brutality~~Brutality and Canada's Racist Justice System

Police authorities in Canada have always upheld the racist system that Canada is founded on. From forced displacement of Indigenous peoples from their homelands to ripping children from families to ~~attend~~incarcerate them in residential schools, Canadian police have ~~partaken in~~been and continue to be on the frontline of genocidal policies and acts against Indigenous peoples. Canada's national police force, the RCMP, is deployed as a paramilitary force, trained in isolation from communities in a culture of systemic racism and ignorance towards Indigenous peoples. First Nations policing initiatives and justice systems are chronically underfunded and their authority undermined and denied by the federal government.

Dozens of reports, commissions, and inquiries over the past six decades have warned that Canada's justice system is failing Indigenous peoples and called for substantive reform, including recognition and implementation of self-determined Indigenous justice systems. Despite these repeated recommendations, the number of federally-incarcerated Indigenous people has increased to the highest it has ever been, at 30% of the federal prison population despite comprising 5% of the population of Canada. In addition, police data reveals that more than one-third of the people shot to death by RCMP officers over a 10-year period were Indigenous.

Since April 1st, 2020, 11 Indigenous people have died at the hands of police in Canada. ~~BC AFN has made several attempts to engage the federal government in co-developing~~In solidarity with the Black Lives Matter movement, this has sparked a national uprising demanding governments to immediately address systemic racism in the justice system and policing. BC AFN, along with the national AFN and other regional AFN organizations, are calling for a National First Nations Justice and Policing Strategy; ~~however, there has not been movement on this file, despite evident need for it~~and Action Plan.

Considering the increase in police brutality against Indigenous peoples during COVID-19, BC AFN is looking to provincial and federal ministries to form a table with First Nations leadership in order to address systemic racism in police enforcement imminently. As stated by BCAFN Regional Chief Terry Teegee and AFNQL Chief Ghislain Picard, "we do not need further study; we know the problems; we need action now".

Section 4: Environmental Impacts

a) Environmental policy reforms

Without engagement with First Nations leadership in British Columbia, government ministries and agencies have made the following unilateral decisions regarding environmental compliance for major projects in the province:

- Developed interim consultation deadlines that allow Crown decision makers to waive, shorten or delay time periods necessary for appropriate consultation and accommodation;

- [Publicly released the following documents without adequate consultation and cooperation of First Nations, thereby potentially breaching the requirements under the DRIPA:](#)
 - [Guide to Indigenous Knowledge in Environmental Assessments;](#)
 - [Guide to Consensus-Seeking under the EA Act, 2018;](#)
 - [Effects Assessment \(s. 25\) Policy;](#)
 - [Process Planning Policy ;](#)
 - [Human and Community Well-being Guideline \(with Economic Effects Analysis Bulletin\);](#)
 - [Project Notification Policy;](#)
 - [Community Advisory Committee Guideline;](#)
 - [Certificate Extension Policy;](#)
 - [Technical Advisory Committee Guideline;](#)
 - [Application Information Requirements Guideline; and,](#)
 - [Certificate Exemption Policy;](#)
- Delayed a planned increase in the province’s carbon tax, indefinitely;
- Deferred the deadline for companies to pay \$11 million in fees for the cleanup of orphaned oil and gas wells ;
- Deferred oil and gas companies’ annual levy on pipelines;
- Deferred \$80 million in timber harvesting fees paid by logging companies;
- Decreased the levy companies pay to produce natural gas, a decision meant to compensate for an increase in the orphan well levy, which is currently suspended;
- Delayed the deadline for paying the provincial carbon tax;
- If companies are not able to comply with normal environmental rules due to COVID-19, they must notify the government and explain how this inability is related to the pandemic — if so, the government will “take into consideration” the circumstances when dealing with the non-compliance.

These environmentally regressive policy reforms contravene the spirit and intent of treaties and other agreements and commitments from the Crown and Province, including the Declaration on the Rights of Indigenous Peoples Act, 10 Principles and TRC Calls to Action. Additionally, many of the major projects that these policy reforms will affect operate in or near isolated First Nations territories. Prior to the pandemic, First Nations people in BC already experienced the worst effects of climate change and environmental degradation; further devastation of environmental integrity without co-development plans for mitigating externalities will lead to worse outcomes across the province for First Nations communities and individuals.

[The provincial government’s efforts to fulfill its reconciliation commitments have unfortunately resulted in the repetition of past mistakes. It has acted unilaterally and disregarded Indigenous perspectives on decisions that engage critical issues of rights and self-determinism. Such unilateral action has occurred throughout the provincial government’s engagement with FNLC, and has arisen in other related circumstances. Most recently, the interim guidelines on consultation activities during the ongoing](#)

COVID-19 pandemic were developed without engagement from Indigenous governance.¹ Such willingness to proceed with decisions that directly impact Indigenous human rights demonstrates a significant gap that remains between the Crown and Indigenous peoples in BC.

¹ On March 25, 2020, the Ministry of Indigenous Relations and Reconciliation released these interim guidelines, intended to provide guidance for members of government and industry currently undertaking consultation activities related to project development in light of the ongoing COVID-19 pandemic. See: "BC Consulting Guidelines During Covid-19", SCRIBD (March 25, 2020), online: <<https://www.scribd.com/document/454438770/BC-Consulting-Guidelines-During-Covid-19>>.

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