

Native Women's Association of Canada

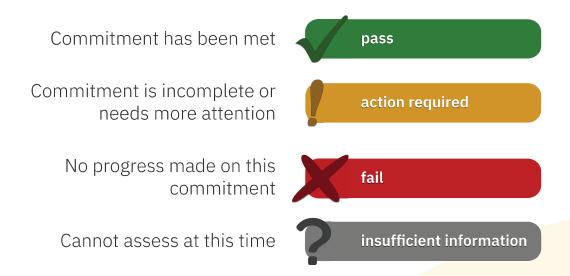
L'Association des femmes autochtones du Canada

Report Card on Government Follow-up to Reclaiming Power and Place: Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls

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Legend



Overview

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls established 'a new framework' for action aimed at righting numerous past wrongs committed against Indigenous women, girls, and gender-diverse persons in Canada. This framework reflected the experiences of witnesses and their families with respect to their basic human rights and the degree to which systems, institutions, and individual service providers failed to offer support.¹

As part of this new framework, the Final Report focused on historical and ongoing rights violations in four areas: the right to culture, the right to health, the right to security, and the right to justice. These fundamental rights are interconnected, interdependent, and indivisible.²

This Report Card by the Native Women's Association of Canada (NWAC) employs these four all-important rights as the basis for gauging government progress in ensuring effective and meaningful follow-up to the National Inquiry's Final Report, published on June 3, 2019. Regrettably, the bleak everyday reality faced by thousands of Canadian Indigenous women, girls, and gender-diverse persons has not fundamentally changed since the publication of that report.

More disappointingly still, in the absence—a whole year later—of any federal National Action Plan as well as a general paucity of publicly available information, it is entirely unclear what the government concretely intends to do to ensure follow-up to the Final Report's Calls to Justice.

Whether the Final Report is destined to suffer the same fate as other past national inquiries remains to be seen. After all, Canada's overall track record in ensuring meaningful follow-up to past inquiries remains highly unimpressive at best.

Writing in 2030, will future commentators be able to point to a crossroads in Canada's hitherto depressing trajectory regarding how it treats Indigenous women and girls? Unless swift, bold, and tangible action is taken now in the form of a National Action Plan aimed at ensuring follow-up to the Final Report and its core rights framework, the answer to this fundamental question will be 'no.'

This Report Card presents a snapshot of where Canada is situated in relation to the four sets of rights, advanced as part of the National Inquiry's new framework. In the absence of any National Action Plan, it is challenging to award any score other than a resounding 'fail' to the Canadian government.

It should be noted as highly relevant, however, that in spite of the COVID-19 global pandemic, Yukon was able to forge ahead with its own strategy in response to the Final Report. In the absence of a federal National Action Plan, similarly devolved approaches might now also be considered.

The Right to Culture

What the Final Report said:

The National Inquiry deemed cultural rights to be inseparable from human rights and Indigenous rights, as articulated in various instruments including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It also observed that such rights were inseparable from the social and political rights necessary to their full enjoyment.

More specifically, the Final Report noted:

"As the testimonies reveal, the right to culture and identity relates directly to the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people through the separation of families, the historical and contemporary realities of assimilationist and genocidal colonial policies, and the lack of culturally appropriate services in healing, justice, and other areas that continue to put Indigenous women, girls, and 2SLGBTQQIA people at risk. Racism, along with the attempted disruption of culture, promotes violence against Indigenous women, girls, and 2SLGBTQQIA people."

In summary, Indigenous women, girls, and gender-diverse persons have the inherent right to their own culture and identity. They also have the right to foster culture and identity within their families and communities through the full implementation of economic, social, and political rights, which can help protect these practices and this knowledge.³

Observations:

Indigenous communities struggle as a whole, on a daily basis, to exercise their right to culture. No discernible improvements have been documented in this regard since the publication of the National Inquiry's Final Report.

As recently as 2016, the UN Committee on Economic, Social and Cultural Rights was critical of Canada's track record on implementing an array of cultural rights, including those dealing with social and economic issues.⁴

A fact-finding mission to Canada a few years previously by the *UN Special Rapporteur* on the rights of Indigenous peoples had also resulted in multiple recommendations vis-à-vis the right to culture as well as other fundamental interconnected rights.⁵

The *Indigenous Languages Act* received Royal Assent on June 21, 2019. The Department of Canadian Heritage is collaborating with Indigenous organizations to implement the Act and to develop a new approach to investing in Indigenous languages. While this work is being carried out, funding for 2020-2021 will be delivered through the <u>Indigenous Languages Component</u> of the Indigenous Languages and Cultures Program. Formerly known as the Aboriginal Languages Initiative, the Indigenous Languages Component supports the reclamation, revitalization, maintenance, and strengthening of Indigenous languages through community-driven activities.

However, the *Indigenous Languages Act* failed to recognize the critical role that Indigenous women play in teaching Indigenous children their language. Indigenous women are the knowledge keepers and as such are responsible for teaching Indigenous children their culture and language.

The failure to recognize the role of Indigenous women in the transference of Indigenous language is rooted in the government's failure to properly conduct a culturally relevant gender-based analysis (CRGBA) on the *Indigenous Languages Act*. If a proper analysis were undertaken by the government, then the legislation would properly reflect the intersection between transferring languages and the significant role that Indigenous women play in teaching Indigenous children their language.

On a somewhat positive note, current efforts to place UNDRIP on a domestic legislative footing, while welcomed, must take place in full consultation with Indigenous actors. It bears noting that the National Inquiry's Final Report made reference to UNDRIP, calling upon governments to immediately implement the instrument. The Truth and Reconciliation Commission had also referenced UNDRIP some 21 times. For Indigenous communities in Canada, UNDRIP remains an extremely relevant human rights instrument.

While it remains to be seen how this legislative process will develop, there is no question that an enormous amount of work lies ahead to ensure that the right to culture is enshrined in practice for Indigenous women, girls, and gender-diverse persons.

Assessment: fail

In the absence of any National Action Plan as a follow-up to the National Inquiry's Final Report, NWAC is unable to comment on how, or even if, the Canadian government intends to respond to the numerous Calls for Justice contained therein relating to the right to culture.

While this outcome may seem remarkable, one full year after the publication of a crucially important, high-profile human rights report, no other conclusion can regrettably be reached at the present moment.

The Right to Health

What the Final Report said:

To the right to health, the National Inquiry adopted a holistic state of well-being, which included mental, emotional, physical, and spiritual well-being, particularly within Indigenous world views. In its view, health was not simply an absence of illness or disability.

The Final Report also linked the right to health to other fundamental human rights, such as access to clean water and adequate infrastructure in communities.

The National Inquiry also recognized that an absence of services, or a lack of culturally appropriate services in communities, as well as other factors linked to health, place women, girls, and gender-diverse persons in vulnerable situations where they become targets of violence.

Equally as importantly:

"For many groups, Indigenous understandings of women's, girls', and 2SLGBTQQIA people's right to health are based on their roles, responsibilities, and related rights as healers ... As healers and medicine people, they have specific expertise in addressing physical, mental, emotional, and spiritual needs. This includes addressing their own unique needs as women, girls, and 2SLGBTQQIA people, and bringing much-needed perspectives to keep communities healthy and whole."

In short, Indigenous women and girls have the inherent right to their own health and well-being. They also have the right to use their expertise to contribute to the health and well-being of their families and communities.⁸

Observations:

NWAC continues to be concerned that the right to health, as defined by the National Inquiry, is not enshrined in practice. Since the publication of the Final Report, the mental, emotional, physical, and spiritual well-being of many Indigenous women and girls continues to be subjected to significant stressors.

Indigenous populations experience health inequities and poorer health outcomes compared to the general Canadian population. While the causes of these disparities are complex and multifaceted, noteworthy determinants include the legacy of colonization and assimilation, discriminatory policies, systemic racism, and ongoing inequities in health care systems, and gaps in existing programming and policy frameworks and social determinants of health.

As recently as 2018, Indigenous women have come forward with evidence that they have been forcibly sterilized, a practice that can be clearly linked to systemic racism within the health care system. Systemic racism in health care manifests itself throughout Canadian society and results in negative health outcomes and violence for Indigenous people (Allan & Smylie, 2015).²

Three fact-finding missions to Canada by different UN experts over the past 18 months have forcefully echoed many of these same concerns. As an illustrative case in point, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stated the following in his May 2019 report:

"Despite good efforts to improve Indigenous physical and mental health, the situation is still one of the most pressing issues in-country. Official data reveals that Indigenous peoples' life expectancy is up to 15 years shorter; rates of infant mortality are two to three times higher; diabetes rates are almost four times higher for First Nations on reserve, and tuberculosis rates are 270 times higher for Inuit."

Just two months before the publication of the Final Report, the *UN Special Rapporteur on the rights of persons with disabilities* undertook a fact-finding mission to Canada, issuing her mission report in December 2019, which stated:

"...Indigenous persons with disabilities, including children, are far behind in the enjoyment of their rights. They experience higher rates of domestic violence, particularly women with disabilities, and have limited access to the products, services and supports they need, even when these are normally available to others. Consequently, many are forced to seek services outside their reserve, which means they face an increased risk of discrimination and a lack of culturally sensitive services."

It is clear from these recent UN reports that much has still to be done to ensure the mental, emotional, physical, and spiritual well-being of Indigenous women and girls in Canada.

As previously noted, the National Inquiry's Final Report also linked the right to health with other fundamental human rights, such as access to clean water and a healthy environment. In a highly damning end-of-mission statement following his June 2019 fact-finding mission to Canada, the *Special Rapporteur on hazardous substances and wastes* stated the following:

"There exists a pattern in Canada where marginalized groups, Indigenous peoples in particular, find themselves on the wrong side of a toxic divide, subject to conditions that would not be acceptable elsewhere in Canada. While the principle and right of non-discrimination is found in the Canadian Constitution, it does not appear to have served as a significant protection or recourse for affected communities in cases of action or, more often than not, inaction by the Government." 12

The impact of this 'toxic divide' on the health and well-being of Indigenous communities has unquestionably far-reaching consequences. Since the publication of the Final Report, these environmentally related health concerns remain unaddressed by the Canadian authorities.

Assessment: fail

The World Health Organization advocates that the highest attainable standard of health is a fundamental right of every human being, and that Canada has a long way to go to ensure Indigenous women, girls, and gender-diverse people are able to attain this right. Indigenous women, girls, and gender-diverse people in Canada continue to experience disproportionate burdens of poor health compared to their non-Indigenous counterparts, including higher rates of chronic and infectious diseases, higher rates of infant mortality, and higher rates of physical and sexual violence. Until these gaps are closed, Indigenous women will not be able to experience and benefit from the highest attainable standard of physical and mental health.

The COVID-19 pandemic has shed light on the fact that Indigenous people are more susceptible to infectious diseases and poorer health outcomes as a result of systemic issues, which increase vulnerability to contracting the virus. These systemic issues include overcrowded housing, food insecurity, lack of clean water, and inadequate health services and infrastructure in many communities. These issues are linked directly to decades of inaction on the part of the federal, provincial, and territorial governments when it comes to ensuring the health of Indigenous people.

As noted previously, in the absence of any National Action Plan on follow-up to the National Inquiry's Final Report, NWAC is not in a position to comment on how, or even if, the Canadian government intends to respond to the numerous Calls for Justice contained therein relating to the right to health. But given that "priority setting and the implementation that follows must be led by Indigenous women, girls, Two-Spirit, and gender diverse people," as stated in the Final Report, we are concerned by the lack of transparency and involvement of Indigenous women in any action that may have been taken in response to the Calls to Justice related to health. More specifically, Call to Justice #7.1 calls upon all governments and health service providers to recognize that Indigenous people—First Nations, Inuit, and Métis, including 2SLGBTQQIA people—are the experts in caring for and healing themselves, and that health and wellness services are most effective when they are designed and delivered by the Indigenous people they are supposed to serve, in a manner consistent with and grounded in the practices, world views, cultures, languages, and values of the diverse Inuit, Métis, and First Nations communities they serve.

In absence of the implementation of this Call to Justice alone, NWAC believes that any action on other Calls to Justice pertaining to health will continue to fall short if they are not designed and delivered by the very Indigenous people who are intended to be served by such actions.

While this outcome may seem remarkable, one full year after the publication of a crucially important, high-profile human rights report, no other conclusion can regrettably be reached at the present moment.

The Right to Security

What the Final Report said:

The National Inquiry understood the right to security as a physical as well as a social right:

"Physically, the right to security includes the right to life, liberty, and personal safety. This includes control over one's own physical and mental health, as well the protection of one's own psychological integrity. In Canada, the Canadian Charter of Rights and Freedoms protects individuals from grave psychological harm perpetrated by the state. On an international level, in the area of social security, the right to security means that the state must ensure protective services or social service assistance and guarantee the protection of the entire population through essential services such as health, housing, and access to water, food, employment, livelihood, and education. Because of its redistributive nature, the right to social security is an important factor in community health and harmony and in reducing poverty."

Consequently, it stated that Indigenous women, girls, and gender-diverse persons have the inherent right to security in their own lives as well as the right to directly participate in maintaining that security for themselves and others, within their own understandings and within the full spectrum of economic, social, and political rights that can contribute to increasing security.¹³

Observations:

Below we detail our observations on the federal government's response to five key aspects contributing to the security of Indigenous women, girls, and gender-diverse people: health, housing, access to water and food, employment and livelihoods, and education.

Health

Indigenous women, girls, and gender-diverse people continue to experience significant gaps in overall health status compared to their non-Indigenous counterparts. While NWAC supports the government's efforts in addressing these gaps (e.g., implementing the First Nations Health Transformation Agenda and the Inuit Health Approach), such initiatives do not apply a GBA+ lens and thus risk

not addressing the health needs of Indigenous women, girls, and gender-diverse people. As noted in earlier sections of this Report Card, the Canadian authorities have not made any significant inroads into addressing the gaps in health services and infrastructure in Indigenous communities since the publication of the Final Report.

Housing

Housing issues are a contributing factor to the lack of safety and security for many Indigenous women. Insufficient accessible shelter and affordable housing options for Indigenous women leave them and their children in abusive situations, especially in remote, rural, and Northern communities. As recently as 2018-2019, the UN Committee against Torture and *UN Special Rapporteur on violence against women* issued recommendations to Canada in this regard. We welcome the federal government's April 2019 launch of the Indigenous Homes Innovation Initiative, as its structure allows for an Indigenous-led response to the housing crisis. However, it remains to be seen if this initiative will address the specific needs of Indigenous women, girls, and gender-diverse people.

The Canada Housing Benefit and National Housing Strategy each have much potential to help Indigenous women afford better and safer housing. The benefit can help Indigenous women and gender-diverse people avoid the long-term cycle of housing precarity and violence. While we welcome the federal government's approach to collaborate with each province to make sure this benefit fits local needs, the slow rollout and new coronavirus-related contingencies leave Indigenous women at high risk of violence and losing their children as they wait for better housing. Similarly, we are encouraged that the National Housing Strategy specifically names Indigenous women and Northern communities, but are disappointed that it does not mention any specific measures to help low-income women keep custody of their children.

Access to Water and Food

Food security remains elusive for many Indigenous families. In 2012, the *UN*Special Rapporteur on the right to food undertook a fact-finding mission to Canada, where he noted grave concerns about the precarious situation of Indigenous peoples in relation to food security. Eight years on, little improvement has been made in this area for significant numbers of Indigenous families. A search of government actions taken within the year has illustrated a handful of funds and initiatives to address food insecurity and access to water, yet these initiatives are largely in response to the COVID-19 pandemic. Since COVID-19 was declared a pandemic, the government established a \$305-million fund to help Indigenous communities address COVID-19. However, since this funding is "emergency" and "temporary," it remains to be seen if the federal government will develop a permanent response to food insecurity in many Indigenous communities.

We are pleased to see that the federal government has facilitated the lifting of 81 long-term drinking water advisories. However, as of February 2020, 61 long-term drinking water advisories are still in effect. The lack of safe drinking water is an egregious example of Indigenous women, girls, and gender-diverse people's right to personal safety not being met.

Employment and Livelihood

The adverse conditions of colonization and the current paternalistic top-down government approaches have created an environment where Indigenous women are politically disenfranchised and economically marginalized. This means Indigenous women are excluded from decision-making positions and forced into financially vulnerable positions. Compared to non-Indigenous women, Indigenous women are more likely to be unemployed or earn low incomes. Poverty makes Indigenous women vulnerable to violence, less autonomous, and reduces access to services. In Canada, the statistics do not lie: Indigenous women, girls, and their communities continue to feature heavily in different national poverty indices. There is currently no indication of this trend significantly reversing.

Education

Education is one of the most important determinants of economic, health, and social well-being. However, substantial gaps in educational outcomes between Indigenous and non-Indigenous women persist: 36% of Indigenous women have a post-secondary certificate, diploma, or degree, compared to 50% of Indigenous women. Less access to education results in higher unemployment and less access to high-quality, high-paying jobs for Indigenous women and gender-diverse people. The Government of Canada has been implementing a co-developed policy framework for First Nations elementary and secondary education. Although this framework represents a positive step, it would be enhanced if it were distinctions-based. Further, the gender norms and barriers that affect non-Indigenous women's education outcomes compound the barriers facing Indigenous communities. Existing government education initiatives fail to fully address these barriers.



In the absence of any National Action Plan as a response to the National Inquiry's Final Report, NWAC is unable to comment on how, or even if, the Canadian government intends to respond to the numerous Calls for Justice relating to the right to security contained therein.

Once again, it is remarkable and regrettable that no other conclusion can presently be reached, despite one full year passing since the publication of this crucial, high-profile human rights report.

The Right to Justice

What the Final Report said:

The National Inquiry found the following:

"As many of the testimonies demonstrate, the problematic relationships between Indigenous women, girls, and 2SLGBTQQIA people and the judicial system are also very significant. Barriers to justice take many forms, including the isolation of victims through inadequate victim services, the failure to accommodate language barriers, and the way Indigenous victims are either portrayed or ignored in the media. Indigenous women, girls, and 2SLGBTQQIA people are also overpoliced and overincarcerated as potential offenders, yet under-protected as victims of crime."22

The Final Report stressed the key point that the above barriers demonstrate significant moments of disconnection between Indigenous people and the Canadian justice system, and the gap between the delivery of justice in practice and theory. The Final Report additionally reaffirmed not only that Indigenous women, girls, and gender-diverse persons have the inherent right to live free from violence or injustice, but if this right is not enshrined in practice, they have the right to have this violence stopped and condemned. 4

Observations:

NWAC has no evidence to indicate that the above reality has fundamentally changed since the publication of the Final Report.

By way of example, a country-visit report by the *UN Special Rapporteur on violence against women*, published in November 2019, highlighted multiple ongoing concerns relating to the right to justice of Indigenous women and girls. NWAC has no concrete information to indicate how these numerous areas of concern are currently being addressed in any systematic manner across government.

Some of these same right-to-justice-related concerns were similarly highlighted by the UN Committee against Torture when examining Canada in Geneva, just six months before the publication of the Final Report.²⁶

The over-incarceration of Indigenous women in Canada remains unchanged. While Indigenous women constitute just a small percentage of the overall population in many Canada, they comprise 42% of the national prison population. In January 2020, the Correctional Investigator of Canada coined this Indigenization of the federal prison population as "nothing short of a national travesty."

The experiences of Indigenous women and policing remains problematic, with the impact of colonialism continuing to reverberate in Indigenous communities. A 2019 Council of Canadian Academies study found that, while efforts have been made to improve policing for Indigenous communities in Canada in recent decades, many continue to receive policing services that do not meet their safety and security needs.²⁸

More worrying still, ongoing primary research conducted by NWAC indicates that violence in the home is increasing during the current health emergency. In short, the right of Indigenous women to have acts of violence against them stopped is not being enshrined in practice. As noted earlier, a dire shortage of housing, emergency accommodation, and shelters continues to negatively contribute to Indigenous women's vulnerability.

In summary, much still needs to be done to correct past and ongoing violations of the right of Indigenous women, girls, and gender-diverse persons to justice, as defined by the National Inquiry.



In the absence of any National Action Plan on follow-up to the National Inquiry's Final Report, NWAC is not in a position to comment on how, or even if, the Canadian government intends to respond to the numerous Calls for Justice contained therein relating to the right to justice.

While this outcome may seem remarkable, one full year after the publication of a crucially important, high-profile human rights report, no other conclusion can regrettably be reached at the present moment.

Endnotes

- 1 Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls 1a (June 2019), 89.
- 2 Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls 1a (June 2019), 118.
- 3 Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls 1a (June 2019), 119-120.
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- 5 Report of the Special Rapporteur on the rights of Indigenous peoples. *The Situation of Indigenous Peoples in Canada* (UN Doc. A/HRC/27/52/Add.2) 4 July 2014.
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- 9 Allan, B., & Smylie, J. (2015). *First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-being of Indigenous Peoples in Canada*, Discussion Paper. Wellesley Institute.
- 10 The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. *Visit to Canada* (UN Doc. A/HRC/41/34/Add.2, 21 May 2019), §73.
- 11 Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada (UN Doc. A/HRC/43/41/Add.2, 19 December 2019), §33.
- 12 End-of-visit statement by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019 (OHCHR, Geneva, Switzerland, 6 June 2019).
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- 16 FNFNES. First Nations Food, Nutrition and Environment Study Summary of Key Findings for Eight Assembly of First Nations Regions 2008-2018. University of Ottawa, Université de Montréal, & Assembly of First Nations, November 2019.
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- 18 PROOF: Food Insecurity Policy Research. *More Canadians are Food Insecure Than Ever Before and the Problem Is Only Getting Worse* (11 March 2020).
- 19 Peters, Evelyn, J. (2006), "[W]e Do Not Lose Our Treaty Rights Outside the... Reserve": Challenging the Scales of Social Service Provision for First Nations Women in Canadian Cities. *GeoJournal* 65: 315–27. DOI: 10.1007/s10708-006-0026-9
- 20 Arriagada, P. (2016). *First Nations, Métis and Inuit Women. Women in Canada: A Gender-based Statistical Report* (7th edition). Statistics Canada (Cat no. 89-503-X). Retrieved from: https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/14313-eng.pdf.
- 21 Employment and Social Development Canada. *Opportunity for All: Canada's First Poverty Reduction Plan* (2018).
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