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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Relator Especial sobre los derechos de los pueblos indígenas, James Anaya

Adición

Situación de los pueblos indígenas en el Canadá*

Resumen

En el presente informe, el Relator Especial sobre los derechos de los pueblos indígenas examina la situación de los derechos humanos de los pueblos indígenas en el Canadá sobre la base de investigaciones e información recibida de diversas fuentes, en particular durante una visita realizada al Canadá del 7 al 15 de octubre de 2013. La visita sucedía a la visita al Canadá y el informe al respecto realizados en 2004 por el anterior Relator Especial (E/CN.4/2005/88/Add.3). Durante su visita, el Relator Especial se reunió con funcionarios gubernamentales a nivel federal y provincial en seis provincias.

La relación del Canadá con los pueblos indígenas de su territorio se rige por un marco jurídico bien establecido y una serie de iniciativas normativas que, en muchos aspectos, protegen los derechos de los pueblos indígenas. No obstante, a pesar de estos elementos positivos, sigue habiendo enormes problemas. Las numerosas iniciativas puestas en marcha a nivel federal, provincial y territorial para hacer frente a los problemas de los pueblos indígenas han sido insuficientes. La brecha entre los aborígenes y no aborígenes del Canadá en materia de bienestar no ha disminuido en los últimos años; siguen sin resolverse reclamaciones presentadas en virtud de tratados y reivindicaciones de los aborígenes; las mujeres y niñas indígenas siguen siendo vulnerables a los abusos; y, en general, parece haber un alto grado de desconfianza de los pueblos indígenas hacia el

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó.

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Gobierno, tanto a nivel federal como provincial.

Es necesario dar más prioridad a las preocupaciones de los pueblos indígenas a todos los niveles y en todas las ramas de gobierno, y en todos los departamentos. La adopción de medidas concertadas, basadas en el entendimiento mutuo y en una verdadera asociación con los pueblos aborígenes por conducto de sus propias instituciones representativas, es esencial para lograr soluciones a largo plazo. A tal fin, es preciso que el Canadá alcance un entendimiento común con los pueblos indígenas sobre objetivos y metas basados en el pleno respeto de sus derechos reconocidos en la Constitución, los tratados y los instrumentos internacionales.

Anexo

[Inglés únicamente]

Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of indigenous peoples in Canada

Contents

I. Introduction

1. In the present report, the Special Rapporteur on the rights of indigenous peoples examines the human rights situation of indigenous peoples in Canada on the basis of research and information gathered from various sources, including during a visit to Canada from 7 to 15 October 2013. The visit was a follow-up to the 2004 visit to and report on Canada by the previous Special Rapporteur (E/CN.4/2005/88/Add.3). During his visit, the Special Rapporteur met with government officials at the federal level and at the provincial level in six provinces. The Special Rapporteur would like to express his appreciation for the support of the Government of Canada and of the indigenous individuals, nations and organizations that provided indispensable assistance in the planning and coordination of the visit.

II. Background and context

2. Over 1.4 million of Canada's overall population of approximately 32.9 million (4.3 per cent) are indigenous, or in the terminology commonly used in Canada, aboriginal. Around half of these are registered or "status" Indians (First Nations), 30 per cent are Métis, 15 per cent are unregistered First Nations, and 4 per cent are Inuit.[1] There are currently 617 First Nations or Indian bands in Canada representing more than 50 cultural groups and living in about 1,000 communities and elsewhere across the country. Canada's indigenous population is younger and faster-growing than the rest of the Canadian population.

3. The history of indigenous peoples' relationship with Europeans and Canada has positive aspects, such as early political and military alliances and policies of coexistence, the Royal Proclamation of 1763 and the related policy of the British Crown of seeking formal permission and treaty relationships with indigenous peoples before permitting settlement in their territories. There are approximately 70 recognized pre-1975 treaties that form the basis of the relationship between 364 First Nations, representing over 600,000 First Nations people, and Canada. In addition, 24 modern treaties are currently in effect.

4. However, there have also been notable episodes and patterns of devastating human rights violations, including the banning of expressions of indigenous culture and religious ceremonies; exclusion from voting, jury duty, and access to lawyers and Canadian courts for any grievances relating to land; the imposition, at times forcibly, of governance institutions; and policies of forced assimilation through the removal of children from indigenous communities and "enfranchisement" that stripped indigenous people of their aboriginal identity and membership. Most of those policies were executed through the Indian Act, a statute with nineteenth century origins. A rigidly paternalistic law at its inception, it continues to structure important aspects of Canada's relationship with First Nations today, although efforts at reform have slowly taken place.

5. A particularly distressing part of the history of human rights violations was the residential school era (1874-1970s, with some schools operating until 1996), during which indigenous children were forced from their homes into institutions, the explicit purpose of which was to destroy their family and community bonds, their languages, their cultures and even their names. Thousands of indigenous children did not survive the experience and some of them are buried in unidentified graves. Generations of those who survived grew up

[1] Aboriginal Affairs and Northern Development Canada, "Aboriginal demographics from the 2011 National Household Survey" (numbers are rounded), available from www.aadnc-aandc.gc.ca/eng/1370438978311/1370439050610.

estranged from their cultures and languages, with debilitating effects on the maintenance of their indigenous identity. That estrangement was heightened during the "sixties scoop", when indigenous children were fostered and adopted into non-aboriginal homes, including outside Canada. The residential school period continues to cast a long shadow of despair on indigenous communities, and many of the dire social and economic problems faced by aboriginal peoples are linked to that experience.

III. Legal, institutional and policy framework

6. Canada's relationship with the indigenous peoples within its borders is governed by a well-developed legal framework that in many respects is protective of indigenous peoples' rights. Building upon the protections in the British Crown's Royal Proclamation of 1763, Canada's 1982 Constitution was one of the first in the world to enshrine indigenous peoples' rights, recognizing and affirming the aboriginal and treaty rights of the Indian, Inuit and Métis people of Canada.[2] Those provisions protect aboriginal title arising from historical occupation, treaty rights and culturally important activities.

7. Since 1982, Canada's courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of *Delgamuukw v. British Columbia* established aboriginal title as a proprietary right to land, grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation,[3] although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fish,, to hunt and to access lands for cultural and economic purposes. Furthermore, since the *Haida Nation v. British Columbia* case in 2004,[4] federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties.[5]

8. The general statute governing registered Indians/First Nations is the Indian Act, which regulates most aspects of aboriginal life and governance on Indian reserves. There are numerous complementary statutes regulating specific subject areas and claims processes, as well as others that give effect to modern treaties and self-government agreements.

9. Notably, Canada recognizes that the inherent right of self-government is an existing aboriginal right under the Constitution which includes the right of indigenous peoples to govern themselves in matters that are internal to their communities or integral to their unique cultures, identities, traditions, languages and institutions, and in respect to their special relationship with their land and their resources. This right of self-government includes jurisdiction over the definition of governance structures, First Nation membership, family matters, education, health and property rights, among other subjects; however, in order to exercise this jurisdiction, agreements must be negotiated with the federal Government. Concerns related to this are discussed in section IV.C below.

[2] Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s. 35.
[3] *Delgamuukw v. British Columbia*, 1997 CanLII 302 (Supreme Court of Canada).
[4] *Haida Nation v. British Columbia (Minister of Forests),* 2004 SCC 73 (Supreme Court of Canada).
[5] See *R. v. Sioui*, 1990 CanLII 103 (Supreme Court of Canada).

10. Constitutionally, the federal Government is responsible for the State's relationship with indigenous peoples, through Parliament's jurisdiction over "Indians and lands reserved for Indians",[6] which as of April 2014 includes Métis.[7] Administratively, the management of the relationship with indigenous peoples at the federal level is the responsibility of the Minister of Aboriginal Affairs and Northern Development Canada (AANDC). Most provinces also have ministries or departments of aboriginal affairs, which are heavily involved in issues concerning social and economic policy and natural resource use, over which the provinces have jurisdiction.

11. In relation to its commitments internationally to protect the rights of indigenous individuals and peoples, Canada is a party to the major United Nations human rights treaties and, in 2010, reversing its previous position, it endorsed the United Nations Declaration on the Rights of Indigenous Peoples.

12. In 2008, Canada made a historic apology to former students of some Indian residential schools, in which it expressed a commitment to healing and reconciliation with indigenous peoples, and to forging a new relationship in which the Government and indigenous peoples could move forward in partnership. Some action has been taken in this regard, including the ongoing implementation of the Indian Residential Schools Settlement Agreement, which was negotiated and agreed upon by former students, the churches that ran the schools, the Assembly of First Nations, other aboriginal organizations and the Government of Canada. A cornerstone of the Settlement Agreement was the creation of the Truth and Reconciliation Commission to witness the experiences of government residential school survivors, create a complete, accessible and permanent historical record of the Indian residential school system and legacy, and promote public awareness of it. The operating period of the Commission was recently extended for one year.

IV. Principal human rights concerns

13. Canada undoubtedly has in place, at both the federal and provincial levels, numerous laws, policies and programmes aimed at addressing indigenous peoples' concerns. Many of them can be pointed to as good practices, at least in their conception, such as Canada's policy of negotiating modern treaties with aboriginal peoples and addressing their historical claims. A full exposition of those laws, policies and programmes is beyond the scope of the present report. Rather, the Special Rapporteur's principal aim here is to highlight the ongoing human rights concerns of indigenous peoples for which improvements are required in existing government laws and policies.

14. It is difficult to reconcile Canada's well-developed legal framework and general prosperity with the human rights problems faced by indigenous peoples in Canada, which have reached crisis proportions in many respects. Moreover, the relationship between the federal Government and indigenous peoples is strained, perhaps even more so than when the previous Special Rapporteur visited Canada in 2004, despite certain positive developments since then and the shared goal of improving conditions for indigenous peoples.

[6] Constitution Act, 1867, 30 & 31 Vict, c 3, s. 91(24).

[7] See *Daniels v. Canada*, 2013 FC 6 (CanLII) (Federal Court) (upheld on appeal with respect to the affirmation of Métis as "Indians" on 17 April 2014).

A. Social and economic conditions

15. The most jarring manifestation of those human rights problems is the distressing socioeconomic conditions of indigenous peoples in a highly developed country. Although in 2004 the previous Special Rapporteur recommended that Canada intensify its measures to close the human development indicator gap between indigenous and non-indigenous Canadians in health care, housing, education, welfare and social services,[8] there has been no reduction in that gap in the intervening period in relation to registered Indians/First Nations, although socioeconomic conditions for Métis and non-status Indians have improved, according to government data.[9] The statistics are striking. Of the bottom 100 Canadian communities on the Community Well-Being Index, 96 are First Nations and only one First Nation community is in the top 100.[10]

16. It might be expected that the costs of social services required by indigenous peoples would be higher than those of the general population, given their needs and the geographic remoteness of many indigenous communities. However, it does not appear that Canada has dedicated greater resources to social services for indigenous peoples. The Auditor General of Canada, an independent parliamentary officer, has alerted the Government that the lack of appropriate funding is limiting social services delivery and thus the improvement of living conditions on reserves.[11]

1. Education

17. At every level of education, indigenous people overall continue to lag far behind the general population. Government representatives have attributed the gap in educational achievement in large measure to high levels of poverty, the historical context of residential schools, and systemic racism.

18. Under the Indian Act, the federal Government is responsible for funding education on reserves, which is administered by First Nations governments. The federal Government also funds 110 First Nations and Inuit cultural education centres, which develop culturally relevant curricula. Outside of reserves, education is funded by provincial and territorial governments and administered by local school boards. There are two exceptions. In British Columbia, education for First Nations is coordinated through a single province-wide education authority and delivered and regulated by individual First Nations, which are provided with stable funding through a tripartite agreement with the provincial and federal governments. Also, 11 First Nation bands in Nova Scotia are self-governing in respect of education, under an agreement concluded in 1997.

19. It bears noting that there exist a number of laudable government education programmes, some of which have demonstrated success. The Aboriginal Head Start in Urban and Northern Communities Program has shown achievements in eliminating disparities between aboriginal and non-aboriginal children in terms of school readiness; unfortunately, the Program reaches less than 10 per cent of aboriginal children.[12] Additionally, some provincial governments are making efforts to ensure that Canadian

[8] E/CN.4/2005/88/Add.3, para. 101.

[9] "2011–2012 report on plans and priorities: demographic description", fig. 9, available from www.aadnc-aandc.gc.ca/eng/1315424049095/1315424155048.

[10] Ibid, fig. 10.

[11] Auditor General of Canada, 2011 June Status Report of the Auditor General of Canada (hereafter "Auditor General 2011 report"), "Chapter 4 – Programs for First Nations on Reserve" (June 2011), preface.

[12] Public Health Agency of Canada, *Evaluation of the Aboriginal Head Start in Urban and Northern Communities Program at the Public Health Agency of Canada* (March 2012), p. 10.

students learn more about the aboriginal contribution to the country, and to promote aboriginal students' success. For example, Saskatchewan has mandatory treaty education and includes First Nations and Métis content, perspectives and ways of knowing into curricula, and is currently developing a pilot strategy for teaching the Cree language.

20. However, numerous First Nations leaders have alleged that federal funding for primary, secondary and post-secondary education is inadequate. The Auditor General has noted that although the Government "identified seven categories of factors having a significant impact on the cost of First Nations education … it did not make funding adjustments based on its findings".[13]

21. In recent years, the federal Government has placed a priority on education, as highlighted by its development of the First Nations Education Bill. However, the bill has been met with remarkably consistent and profound opposition by indigenous peoples across the country. Indigenous leaders have stated that their peoples have not been properly consulted about the bill and that their input had not been adequately incorporated in the drafting of the bill. The main concerns expressed by indigenous representatives include that (a) the imposition of provincial standards and service requirements in the bill will undermine or eliminate First Nation control of their children's education; (b) the bill lacks a clear commitment to First Nations languages, cultures and ways of teaching and learning; (c) the bill does not provide for stable, adequate and equitable funding of indigenous schools; and (d) the bill will displace successful education programmes already in place, an issue that was raised particularly in British Columbia.

22. In a positive development, in February 2014, the Government, supported by the Assembly of First Nations, announced Can$ 1.9 billion in additional education funding starting in 2015, including Can$ 500 million for education infrastructure, and a 4.5 per cent annual "escalator" for core funding, to commence in 2016, in place of the long-standing 2 per cent cap on funding increases. The Government also affirmed that First Nations would maintain control over education. However, it remains unclear to what extent First Nations were adequately consulted about these developments.

23. Approximately 90 aboriginal languages are spoken in Canada. Two thirds of these languages are endangered, severely endangered or critically endangered, due in no small part to the intentional suppression of indigenous languages during the Indian residential school era. The same year the federal Government apologized for the residential school policy, 2008, it committed some Can$ 220 million annually for the next five years to Canada's "Linguistic Duality" programme to promote English and French.[14] By comparison, over the same period, the federal Government spent under Can$ 19 million annually to support indigenous language revitalization.[15]

2. Housing

24. The housing situation in Inuit and First Nations communities has reached a crisis level, especially in the north, where remoteness and extreme weather exacerbate housing problems. Overcrowded housing is endemic. Homes are in need of major repairs, including plumbing and electrical work. These conditions add to the broader troubling water situation in First Nations reserves, in which more than half of the water systems pose a medium or high health risk to their users.[16] The housing crisis has been identified by Inuit representatives as a high priority issue. It is worth noting that the chronic housing shortage

[13] Auditor General 2011 report,, para. 4.30.

[14] Ministry of Canadian Heritage website, "Roadmap for Canada's linguistic duality 2008–2013: acting for the future".

[15] Assembly of First Nations, Report to the Special Rapporteur (2013), pp. 50–51.

[16] Auditor General 2011 report, para. 4.34.

has a severe negative effect on a wide variety of economic and social conditions. Overcrowding contributes to higher rates of respiratory illness, depression, sleep deprivation, family violence, poor educational achievement and an inability to retain skilled and professional members in the community.

25. Trying to meet their communities' housing needs is a major contributor to deficits and financial difficulties for indigenous peoples throughout the country. The federal Government, through AANDC and the Canada Mortgage and Housing Corporation (CMHC), provides some support for on-reserve housing in First Nations communities. First Nations report that, with this funding, over the past five years they have built approximately 1,750 new units and made renovations to more than 3,100 existing units. However, as is the case off reserve, First Nations are expected to seek other sources of funding, such as private sector loans, to meet housing needs, which is a daunting task for many communities.

26. Overall, investments have not kept pace with the demand for new housing or the need for major renovations to existing units. Government representatives have attributed the lack of adequate funding in large measure to the difficulties presented by the communal ownership of indigenous lands in obtaining mortgages or financing for housing. In response, the Government has established loan guarantees, for which First Nations can apply, to provide security for on-reserve housing loans. Despite loan guarantee increases in recent years, much more remains to be done to provide secure loans for housing, both on and off reserve, in a way that respects and accommodates the communally held nature of aboriginal lands.

27. Funding for housing in Inuit communities is different in each of the four regions. CMHC provides funding to provinces and territories for housing, which in turn, decide on priorities in their respective jurisdictions. This affords provinces and territories the flexibility to design and deliver programmes in order to address Inuit-specific housing needs and priorities as they see fit. In addition to CMHC funding, some arrangements specific to housing in the Inuit regions have been made. Most recently, the Government announced an investment of Can$ 100 million, over two years, to support the construction of about 250 new housing units in Nunavut under Canada's Economic Action Plan 2013. Still, severe housing shortages persist for Inuit communities.

28. The Special Rapporteur notes with satisfaction the enactment in June 2013 of legislation regarding on-reserve matrimonial real property, the Family Homes on Reserves and Matrimonial Interests or Rights Act, to provide protection to aboriginal women equivalent to what non-aboriginal women receive in the event of a marriage breakdown, as recommended by the previous Special Rapporteur in 2004.[17] However, concerns have been raised that the legislation may be unworkable in a context in which multiple generations or families occupy the same home due to housing shortages, or in which people other than the divorcing spouses may have an interest in the home according to indigenous custom.

3. Health and well-being

29. The health of First Nations, Inuit and Métis people in Canada is a matter of significant concern. Although overall the health situation of indigenous peoples in Canada has improved in recent years, significant gaps still remain in health outcomes of aboriginal as compared to non-aboriginal Canadians, including in terms of life expectancy, infant mortality, suicide, injuries, and communicable and chronic diseases such as diabetes. The health situation is exacerbated by overcrowded housing, high population growth rates, high poverty rates and the geographic remoteness of many communities, especially Inuit communities in the north.

[17] E/CN.4/2005/88/Add.3, para. 112.

30. Health care for aboriginal people in Canada is delivered through a complex array of federal, provincial and aboriginal services, and concerns have been raised about the adequacy of coordination among them. A recent positive development in British Columbia, which could provide a model for other areas, is the 2013 implementation of a tripartite agreement to achieve a more responsive health-care system. The oversight and delivery of federally funded health services in British Columbia have been transferred to First Nations, while the three levels of government (First Nations, provincial and federal) work collaboratively to support integration and accountability.

31. With respect to other issues affecting the well-being of indigenous peoples in Canada, among the results of the residential school and "sixties scoop" eras and associated cultural dislocation has been a lack of intergenerational transmission of child-raising skills and high rates of substance abuse. Aboriginal children continue to be taken into the care of child services at a rate eight times higher than non-indigenous Canadians. Further, the Auditor General identified funding and service level disparities in child and family services for indigenous children compared to non-indigenous children,[18] an issue highlighted by a formal complaint to the Canadian Human Rights Tribunal by the First Nations Child and Family Caring Society and the Assembly of First Nations. In a positive development, in 2000 the Province of Manitoba and the Manitoba Métis Federation, which represents Métis rights and interests in the province, signed a memorandum of understanding for the delivery of community-based and culturally appropriate child and family services, which has demonstrated important successes.

B. Administration of justice

1. Overrepresentation in the justice system

32. Given these dire social and economic circumstances, it may not come as a surprise that, although indigenous people comprise around 4 per cent of the Canadian population, they make up 25 per cent of the prison population. This proportion appears to be increasing. Aboriginal women, at 33 per cent of the total female inmate population, are even more disproportionately incarcerated than indigenous individuals generally and have been the fastest growing population in federal prisons.

33. This situation exists despite notable efforts, such as the Aboriginal Courtwork Program (which provides funds to assist aboriginal people in the criminal justice system to obtain equitable and culturally appropriate treatment); the Aboriginal Justice Strategy (which provides aboriginal people with alternatives to the mainstream justice system, where appropriate); the "Gladue principle" (which requires courts to consider reasonable alternatives to incarceration in sentencing aboriginal people); and the efforts of the Canadian Human Rights Commission to facilitate aboriginal communities' development of alternative dispute resolution mechanisms. However, more recently, the Government has enacted legislation[19] that limits the judicial discretion upon which these programmes rely, raising concerns about the potential for such efforts to reduce the overrepresentation of aboriginal men, women and children in detention.

2. Missing and murdered aboriginal women and girls

34. Indigenous women and girls are also disproportionately victims of violent crime. The Native Women's Association of Canada has documented over 660 cases of women and girls across Canada who have gone missing or been murdered in the last 20 years, many of

[18] Auditor General 2011 report (see footnote 11 above), paras. 4.49–4.50.

[19] Safe Streets and Communities Act, 2012.

which remain unresolved, although the exact number of unresolved cases remains to be determined. Since 1996, there have been at least 29 official inquiries and reports dealing with aspects of this issue, which have resulted in over 500 recommendations for action.[20]

35. To address this severe problem, in 2010 the federal Government implemented a seven-point plan, which includes a mix of law enforcement and justice initiatives, as well as funding for victim and family support and prevention and awareness programmes. One part of the plan, which involves the identification of best practices in policing and the justice system in interactions with aboriginal women, resulted in the creation in March 2012 of an online searchable Compendium of Promising Practices to Reduce Violence and Increase Safety of Aboriginal Women in Canada. Further, over the last decade, the Royal Canadian Mounted Police, Canada's federal police force, has established integrated projects, units and task forces in Manitoba, British Columbia and Alberta to review unsolved homicides and missing persons cases.

36. There has also been action at the provincial level. For example, Manitoba has implemented legislative changes to improve investigative powers in missing persons cases and protect victims of trafficking, and has engaged in a number of consultations and awareness-raising efforts and funded anti-violence programmes. Ontario now includes persons missing for more than a month in their major crimes database, and the provincial police force has established an internal working group to link analysis, prevention and investigative efforts across the organization. Likewise, the Saskatchewan police have a provincial database on missing persons, which identifies aboriginal and non-aboriginal persons, and the province has a unique Provincial Partnership Committee on Missing Persons, which coordinates policy and public awareness development between aboriginal groups, the police and the justice system, and with non-governmental agencies.

37. Nevertheless, these efforts and any positive results from them have not, at least yet, abated continuing calls for greater and more effective action to address the problem of missing indigenous women and girls. During his visit to Canada, the Special Rapporteur heard consistent, insistent calls across the country for a comprehensive, nationwide inquiry, organized in consultation with indigenous peoples, that could provide an opportunity for the voices of the victims' families to be heard, deepen understanding of the magnitude and systemic dimensions of the issue, and identify best practices that could lead to an adequately coordinated response.

C. Self-government and participation

1. Self-government arrangements

38. By all accounts, strengthening indigenous peoples' self-government is essential to improving their social and economic situation and sustaining healthy communities. A 2011 assessment by the federal Government of the achievements and problems of its self-government policy concluded that self-governing indigenous nations enjoy improved outcomes in educational achievement and employment levels. In that regard, the Special Rapporteur was pleased to hear a desire to improve the capacity of indigenous governance institutions from all levels of government in Canada.

39. Yet many of Canada's laws, in particular the Indian Act, still do not permit the effective exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding

[20] Native Women's Association of Canada, List of reports and recommendations on violence against indigenous women and girls (27 March 2013).

for reserve programmes and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives for First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health, lands and other matters, in accordance with the constitutionally protected "inherent right" of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations.

40. For their part, the Métis, who are not covered by the Indian Act, have started to engage in tripartite negotiations towards self-government agreements in key areas, including the family and childcare, economic development, and housing, though much still remains to be done to build and fund Métis governance institutions.

41. As for the Inuit regions, two of the four land claim agreements concluded for them contain self-government provisions. The Nunavut Land Claims Agreement (1993) led to the creation of Canada's newest territory and public government in 1999. The Nunatsiavut-Labrador Inuit Land Claims Agreement (2005) led to the establishment of the Nunatsiavut Government, which has the power to pass laws concerning education, health and cultural affairs. Agreements in the two other Inuit areas remain outstanding. In Nunavik, Makivik Corporation (representing the Inuit of Quebec), the Government of Quebec and Canada negotiated a final self-government agreement to establish a regional public government responsible for delivering certain social services, such as education and health services. However, voters in Nunavik rejected the agreement in April 2011 and efforts towards a self-government agreement are ongoing. In 1996, the Inuvialuit Regional Council, in concert with the Gwich'in Tribal Council, commenced self-government negotiations with Canada and the Government of the Northwest Territories, with which they envisioned the operation of a regional public government structure, combined with a system of guaranteed aboriginal representation on the councils of restructured community public governments. An agreement-in-principle was reached in April 2003 but was later rejected by the Gwich'in Tribal Council. The two groups have subsequently resumed negotiating at separate tables on separate agreements.

2. Funding self-government under the Indian Act

42. Federal funding for First Nations governments under the Indian Act is structured through "contribution agreements" for which they must apply. Funding priorities and amounts are unilaterally, and some say arbitrarily, determined by the federal Government. Spending is monitored and reviewed to ensure that conditions the Government imposes are met, and funds are withheld if audits are not delivered on time – which forces indigenous governments to reallocate available funds to ensure programming continuity, making reporting even more difficult.

43. This funding mechanism also leads to reporting requirements that were repeatedly described to the Special Rapporteur as onerous. First Nations communities that receive federal funding under the Indian Act regime, 70 per cent of which have fewer than 500 residents,[21] typically have to produce 100 or more reports a year for various federal agencies.[22] The Government acknowledges that "reliance on annual funding agreements

[21] AANDC "deck" presentation to the Special Rapporteur, The Context, p. 8 (citing Statistics Canada, 2011 Census).

[22] Auditor General 2011 report (see footnote 11 above), para. 4.72.

and multiple accountabilities … can impede the provision of timely services and can limit the ability of First Nations to implement longer-term development plans".[23]

44. Furthermore, if a First Nation government functioning under the Indian Act has financial difficulties as a result of funding delays, reporting delays or other situations, it faces the potential imposition of a co-manager or federally appointed third-party manager who takes over control of all the nation's federally funded programmes and services. There do not appear to be significant financial management resources available from the federal Government for First Nations, at their own request, before they are in a default or deficit position. There is clearly a perception among indigenous leaders that third-party management can be imposed for punitive or political reasons.

45. The Special Rapporteur heard criticisms over the relatively new "own-source revenue" policy, which is likely to be phased in to all funding agreements between the federal Government and First Nations. Under this policy, First Nations will be expected, as they are able and over time, to contribute to the costs of their government activities, with the expectation that indigenous reliance on federal funding will decline. Specifically, aboriginal representatives have expressed the feeling that they are being "punished" when they demonstrate success, in the sense that their funding will be reduced.

4. Partnership and participation of indigenous peoples in decision-making

46. As noted above, the Government of Canada has a stated goal of reconciliation, which the Special Rapporteur heard repeated by numerous government representatives with whom he met. Yet even in this context, in recent years, indigenous leaders have expressed concern that progress towards this goal has been undermined by actions of the Government that limit or ignore the input of indigenous governments and representatives in various decisions that concern them. These actions in part sparked the "Idle No More" protests throughout the country in December 2012.

47. Most notable were concerns expressed about a lack of effective participation of indigenous peoples in the design of legislation that affected them. In 2012, the federal Government enacted or amended a number of statutes affecting Canada's indigenous peoples, including the Canadian Environmental Assessment Act, the National Energy Board Act, the Fisheries Act, the Navigable Waters Protection Act and the Indian Act, through two "omnibus" budget implementation acts, the Jobs and Growth Act 2012 (Bill C-45) and the Jobs, Growth and Long-term Prosperity Act (Bill C-38). Despite the vast scope and impact on indigenous nations of the omnibus acts, there was no specific consultation with indigenous peoples concerning them.

48. Other legislation of concern includes the Safe Drinking Water for First Nations Act, which vests broad power in the federal Government in relation to drinking and wastewater systems on First Nations lands. As noted above, indigenous peoples have also complained about a lack of consultation regarding the proposed First Nations Education Act and the Family Homes on Reserves and Matrimonial Interests or Rights Act.

49. In addition, there have been a number of actions in recent years that have been viewed as affronting the aspired-to partnership relationship between First Nations and the Government. For example, the prioritization of the First Nations Financial Transparency Act, in a context in which indigenous governments are already the most overreporting level of government, has been perceived by First Nations to reinforce a negative stereotype of aboriginal people and governments as incompetent and corrupt, and to undermine rather than promote public support for indigenous self-government. Also, the unilateral changes to

[23] John Duncan, "Government of Canada response to second report of the Standing Committee on Public Accounts" (2012).

contribution agreements in 2013, without consultation regarding the wording and implications of these new agreements, included language which in other circumstances would appear innocuous, but which has been widely interpreted by First Nations to imply that receipt of their necessary operating funds was contingent on providing their consent to unspecified future legislative and regulatory changes.

50. Another example of actions that have strained the relationship between indigenous peoples and the Government is the international border arrangement put in place for the Akwesasne reserve, which spans the border between Canada and the United States of America, after the community objected to border guards carrying firearms on their reserve. Since the border station was moved, Mohawk residents of the reserve travelling entirely within their own territory but across the international boundary are required to leave their reserve and report to border services at the station. Failure to report in this manner may result in onerous fines, confiscation of vehicles and in some cases imprisonment. Mohawk residents perceive this arrangement as a punitive measure in response to the community's activism.

51. More broadly, indigenous leaders complain that the federal Government frequently uses a discourse of responsibility to Canadian taxpayers for the cost of First Nations treaty benefits, without a corresponding acknowledgement of the vast economic benefits that have accrued to non-indigenous Canadians as a result of the constitutional treaty relationships that provided them with access to the national territory. This discourse places First Nations outside, and in opposition to, "Canadian" interests, rather than understanding indigenous people to be an integral aspect of those interests.

5. Membership

52. A key issue that affects the self-governance capacity of First Nations is the Indian Act definition of who qualifies as a "status" or "registered" Indian. Like other Canadians, First Nations individuals have often built families with partners from different backgrounds. Unlike for other Canadians, however, for many First Nations individuals, doing so carries serious consequences for their children's ability to stay in their community as adults. This in turn has significant consequences for First Nations' ability to retain diverse economic skills, since those most likely to "marry out" are those who have lived outside the community to gain education or experience.

53. While the Indian Act permits First Nations the option of making their own membership rules, many benefits follow statutorily defined status under the Indian Act, not membership. They include on-reserve tax exemptions, estate rules, certain payments and post-secondary education support and, perhaps most importantly, federally funded on-reserve housing. This makes it difficult in practice for First Nations to enable non-status members to live on reserve, including children who have grown up on reserve and know no other home.

54. Those distinctions, compounded by two levels of status under the Indian Act, have the practical effect of imposing different classes of First Nation citizenship, within a convoluted regulatory matrix, regardless of the criteria or collective decisions of the First Nation. To simplify, under the Indian Act, 6(1) status is accorded to children with two status Indian parents (or to children with a status Indian father and a white mother who were married prior to 1985); individuals with 6(1) status pass on status to their children. Children with only one 6(1) status parent are accorded 6(2) status, which means they do not have the right to pass Indian status to their children unless their child's other parent has either 6(1) or 6(2) status.[24]

[24] Indian Act, RSC 1985, c I-5, s. 6(2), 7.

55. The enactment of the Gender Equity in Indian Registration Act remediated some of the ongoing discriminatory effects of historical provisions that revoked the Indian status of women – and all their descendants – who married non-status men, while granting status to non-aboriginal women – and their descendants – who married status Indians. Unfortunately, as acknowledged by the Senate Standing Committee on Human Rights, this legislation did "not deal with all sex discrimination stemming from the Indian Act";[25] some classes of people continue to be excluded from status on the basis of the historical discrimination against matrilineal descent. This two-parent rule is the context for another problematic policy regarding unstated paternity, which arises if the child is a product of violence, rape, or incest, cases in which the need to obtain proof of status from the father places the mother at risk. Under this policy, any father who is not identified in the birth registration of an infant is presumed not to be a registered Indian unless the mother provides sworn proof from the father or his family acknowledging paternity.

56. Métis membership is not defined under the Indian Act or other legislation. Facing objections by the Government that it was not possible to identify members of the Métis community, the Supreme Court has concluded that identity is demonstrated where a person has an ancestral connection to the community, self-identifies as a member and is accepted as such by the community.[26] This approach has been lauded for allowing for more flexibility and indigenous control over membership.

57. Inuit membership lists are maintained by each of the four beneficiary organizations in Canada (Inuvialuit Regional Corporation, Nunavut Tunngavik Incorporated, Makivik Corporation and the Nunatsiavut Government). In each case, they establish their own criteria, generally based on ancestry and self-identification as an Inuk.

D. The modern treaty and other claims processes

58. Over the past decades, Canada has taken determined action to address ongoing aspects of the history of misdealing and harm inflicted on aboriginal peoples in the country, a necessary step towards helping to remedy their current disadvantage. Perhaps most significantly, it has legislation, policy and processes in place to address historical grievances of indigenous peoples with respect to treaty and aboriginal rights, In this regard, Canada is an example to the world. Settlement agreements and other arrangements achieved provide important examples of reconciliation and accommodation of indigenous and national interests.

59. Modern treaties, also referred to as comprehensive land claims agreements, deal with areas over which indigenous peoples have claims that have not been addressed through historical treaties or other legal means. Since 1973, 24 comprehensive land claims agreements have been concluded and are in effect. They cover approximately 40 per cent of Canada's land mass and affect 95 indigenous communities.[27] At the provincial level, the British Columbia Treaty Process was established in 1993 to resolve outstanding claims to lands and resources in the province, and has resulted in two final agreements that have come into effect; the Government reports that two more are very close to taking effect.

60. Apart from modern treaty-making to comprehensively settle land claims is the specific claims process, which provides redress for historical grievances arising out of historical treaties and settlements already reached through negotiations or binding decisions of the Specific Claims Tribunal. The specific claims process includes a so-called Treaty

[25] Standing Senate Committee on Human Rights, Sixth Report (7 December 2010).
[26] R. *v.* Powley, 2003 SCC 43 (Supreme Court of Canada).
[27] AANDC website, "Fact sheet: comprehensive land claims".

Lands Entitlement mechanism, a procedure for settling land debt owed to First Nations that did not receive all of the land to which they were entitled under historical treaties. In particular, Treaty Lands Entitlement is significantly enhancing the land base of many First Nations, addressing a recommendation made by the previous Special Rapporteur in 2004.

61. Despite their positive aspects, these treaty and other claims processes have been mired in difficulties. As a result of these difficulties, many First Nations have all but given up on them. Worse yet, in many cases it appears that these processes have contributed to a deterioration rather than renewal of the relationship between indigenous peoples and the Canadian State.

62. Many negotiations under these procedures have been ongoing for many years, in some cases decades, with no foreseeable end. An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pretrial motions, which require the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of government representatives have also delayed or stymied progress towards agreements.

63. The Government also tends to treat litigation and negotiation as mutually exclusive options, instead of complementary avenues towards a mutual goal in which negotiations may proceed on some issues while the parties seek assistance from the courts concerning intractable disagreements. Furthermore, the Government's stated objective of "full and final certainty" with respect to rights burdens the negotiation process with the almost impossible requirement of being totally comprehensive and anticipating all future circumstances. The federal Government has acknowledged that it is out of step with the provinces on this point and is reportedly contemplating changing course to allow interim or partial agreements, which is a hopeful sign.

64. The costs for all of the parties involved are enormous. Outstanding loans to First Nations from Canada in support of their participation in the comprehensive land claims negotiations total in excess of Can$ 700 million. These loans remain owing even if a government party discontinues the negotiations. Nor is litigation between Canada or its provinces and indigenous peoples more economical or efficient. For example, the Tshilhqot'in Nation's aboriginal title litigation has cost the Nation more than Can$ 15 million, and taken 14 years to pursue, including five years of trial, and the case is currently under appeal to the Supreme Court of Canada. Also, the Nuu-chah-nulth Nation's litigation over a commercial aboriginal right to fish has taken 12 years, including three years of trial and successive appeals. In the meantime, the Nuu-chah-nulth have been permitted to access very little of the fishery.

65. Finally, an important impact of the delay in treaty and claims negotiations is the growing conflict and uncertainty over resource development on lands subject to ongoing claims. It is understandable that First Nations who see the lands and resources over which they are negotiating being turned into open-pit mines or drowned by a dam would begin to question the utility of the process. For example, four indigenous nations in the Treaty 8 territory in British Columbia have been in treaty land entitlement negotiations for a decade, for "so long that there are almost no available lands left for the First Nations to select".[28]

[28] Treaty 8 Tribal Association, briefing to the Special Rapporteur, 10 October 2013.

66. Even for those First Nations that achieve an agreement despite these challenges, implementation has proved to be difficult. The vast majority of the country's territory was constituted through historical (pre-1975) treaties with First Nations, which for many First Nations form a core aspect of their identity and relationship with Canada. Given their constitutional implications, these treaties should have a similar significance for other Canadians, yet treaty litigation forms 25 to 30 per cent of the Department of Justice's inventory of cases, according to information provided by the Government to the Special Rapporteur. There are similar problems with implementation of court judgements affirming aboriginal rights. Poor implementation of existing rights and treaties is hardly a strong motivator for concluding new ones.

67. Since the visit of the previous Special Rapporteur in 2004, both the federal and provincial/territorial governments have made efforts to improve the treaty negotiation and claims processes. In 2007, the Government developed the Specific Claims Action Plan to address the backlog of pending claims, including by establishing a three-year time frame for negotiating settlements, after which First Nations may opt to refer their case to a tribunal for a final settlement. Also, federal legislation in 2008 established the Specific Claims Tribunal through which First Nations can seek and obtain decisions and awards binding on Canada in relation to historical grievances. In 2013, the Government established a Senior Oversight Committee composed of high-level federal and indigenous officials to review and update the comprehensive land claim policy on the basis of the principles of recognition and reconciliation.

68. It bears mentioning that, in spite of recent judicial affirmation that the Métis had not been provided the lands they were owed under the letter and spirit of the constitutional agreement that created Manitoba,[29] the Government does not appear to have a coherent process or policy in place to address the land and compensation claims of the Métis people.

E. Indigenous participation in economic development

69. One of the most dramatic contradictions indigenous peoples in Canada face is that so many live in abysmal conditions on traditional territories that are full of valuable and plentiful natural resources. These resources are in many cases targeted for extraction and development by non-indigenous interests. While indigenous peoples potentially have much to gain from resource development within their territories, they also face the highest risks to their health, economy and cultural identity from any associated environmental degradation. Perhaps more importantly, indigenous nations' efforts to protect their long-term interests in lands and resources often fit uneasily into the efforts of private non-indigenous companies, with the backing of the federal and provincial governments, to move forward with natural resource projects.

70. As negotiations under the treaty and claims processes reach a standstill in many cases, other kinds of negotiated agreements outside these contexts are taking place, especially in relation to natural resources development, a booming industry in Canada and a main driver of the Canadian economy. Indeed, there are a number of examples in which First Nations have enjoyed economic and social benefits from resource projects, either through their own businesses, joint ventures or benefit-sharing agreements. In particular those First Nations that have clarified their aboriginal rights and title can benefit from these potential economic development initiatives.

71. The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the "honour of the Crown" together impose a duty to

[29] *Manitoba Métis Federation v. Canada (Attorney General)*, 2013 SCC 14 (Supreme Court of Canada).

consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights.[30] The Special Rapporteur repeatedly heard from aboriginal leaders that they were not opposed to development in their lands generally and went to great lengths to participate in such consultation processes as were available, but that those were generally inadequate, not designed to address aboriginal and treaty rights, and usually took place at a stage when project proposals had already been developed. There appears to be a lack of a consistent framework or policy for the implementation of this duty to consult, which is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic development nor social peace.

72. The federal Government informed the Special Rapporteur that the duty to consult and accommodate in connection with resource development projects could be met through existing processes, such as the environmental assessment process. Since the passage of the controversial 2012 Jobs, Growth and Long Term Prosperity omnibus legislation, discussed above, fewer projects require federal environmental assessments. When they do occur, they often require indigenous governance institutions – already overburdened with paperwork – to respond within relatively short time frames to what has been described as a "bombardment" of notices of proposed development; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns. Indigenous governments then deliver these concerns to a federally appointed review panel that may have little understanding of aboriginal rights jurisprudence or concepts and that reportedly operates under a very formal, adversarial process with little opportunity for real dialogue.

73. Indigenous representatives made the Special Rapporteur aware of a number of proposed or implemented development projects that they felt posed great risks to their communities and about which they felt their concerns had not been adequately heard, or addressed. They include:

- The Enbridge Northern Gateway pipeline from Alberta to the British Columbia coast
- The Kinder Morgan Trans Mountain pipeline twinning project
- The New Prosperity open-pit gold and copper mine in unceded Tsilhqot'in traditional territory, which was twice rejected by an environmental assessment panel
- The Fortune Minerals open-pit coal mine permit, which issued over 16,000 hectares of unceded traditional territory of the Tahltan Nation in British Columbia
- The Liquid Natural Gas pipeline and drill wells in northern British Columbia in Treaty 8 nations' traditional territory
- Site C hydroelectric dam on the Peace River affecting Treaty 8 nations
- The Athabascan oil sands project, which is contaminating waters used by the downstream Athabasca First Nation
- The Platinex project in Kitchenuhmaykoosib Inninuwug (KI) First Nation traditional territory, in which a lack of prior consultation resulted in bidirectional litigation and the imprisonment of community leaders for mounting a blockade to protect their lands; and subsequent deals to withdraw KI lands from prospecting and mining development without consultation with the KI Nation

[30] *Haida Nation* (see footnote 4 above).

- The clean-up, remediation and compensation process for six bitumen oil spills resulting from steam injection extraction in Cold Lake First Nation traditional territory, a remediation process that has included draining a lake
- Two proposed hydroelectric dams affecting the Pimicikamak Nation, despite implementation failures of the Northern Flood Agreement that was intended to mitigate the effects of the last hydroelectric dam that flooded and eroded their lands
- The reopening of a Hudbay nickel/gold mine in Mathias Columb First Nation traditional territory without consultation with, the consent of, or a benefits-sharing agreement with that nation
- The construction of the Fairford and Portage Diversion water-control structures, and the lack of imminent flood protection, flooding and relocation of the Lake St. Martin First Nation in 2011
- Approval of the construction of the Jumbo Glacier Resort in an unceded area of spiritual significance to the Ktunaxa Nation
- Authorization of forestry operations in Mitchikanibikok Inik traditional territory (Algonquins of Barriere Lake)
- Setting the percentage of the salmon fishery allocated to aboriginal uses (social and commercial) without consultation with affected First Nations
- Seismic testing for natural gas "fracking" extraction in Elsipogtog First Nation traditional territory.

74. Since natural resources on public lands are owned and regulated by provincial governments, while "Indians and lands reserved for Indians" are a federal jurisdiction, Canada's duty to consult and, when appropriate, accommodate indigenous peoples with rights and interests over lands where development is proposed implicates both orders of government. As a practical matter, however, it appears that resource companies themselves organize the consultations, where they occur. The federal Government has acknowledged that it lacks a consistent consultation protocol or policy to provide guidance to provinces and companies concerning the level of consultation and forms of accommodation required by the constitutional duty to consult.

75. There are some positive developments around the duty to consult, primarily at the provincial level. In Ontario, the negotiation of community-specific impact and benefit agreements with resource companies is becoming common and expected by indigenous communities. Ontario has also amended its Mining Act and Green Energy Act to require increased consultation and accommodation to protect aboriginal rights, and notice prior to any mineral claim staking. Manitoba has created a Crown-Aboriginal Consultation Participation Fund to facilitate aboriginal participation in consultations, and is treating its Interim Provincial Policy and Guidelines for Crown Consultations as a work in progress pending further feedback and dialogue with aboriginal nations. In Nova Scotia, indigenous nations have worked with the provincial and federal governments to develop terms of reference for consultations. The federal Government is also working with a number of provinces on framework agreements or memorandums to improve the clarity and consistency of consultation processes.

76. However, the indigenous representative with whom the Special Rapporteur met expressed concern that, generally speaking, provincial governments did not engage with the duty to consult until development proposals had largely taken shape. When consultation happened, resource companies had often already invested in exploration and viability studies, baseline studies were no longer possible, and accommodation of indigenous peoples' concerns required a deviation from companies' plans. The Special Rapporteur

notes that this situation creates an unnecessarily adversarial framework of opposing interests, rather than facilitating the common creation of mutually beneficial development plans.

77. It is worth referencing other positive initiatives at the provincial level in the area of resource extraction that encourage indigenous participation in economic development activities and benefits. For example, Ontario has a loan guarantee programme to facilitate joint ventures in green energy development by First Nations and provides funding for them to obtain third-party, professional advice to assess the feasibility and viability of a proposed partnership. Ontario also funds the Métis Voyageur Development Fund for Métis-led resource development. In Alberta, industry groups point to a number of joint ventures with First Nations in the energy sector, such as Kainai Energy oil and gas development company of the Blood Tribe and Tribal North Energy Services of Whitefish Lake First Nation. In British Columbia and other parts of the country, governments encourage impact benefit and resource-sharing agreements between resource companies and First Nations. British Columbia also has revenue-sharing arrangements for mining royalties, stumpage fees, and oil and gas revenues. The Special Rapporteur is concerned, however, about the province of Saskatchewan's position against revenue-sharing directly with First Nations on the ground that resources are for all residents of Saskatchewan.

V. Conclusions and recommendations

78. **Canada was one of the first countries in the modern era to extend constitutional protection to indigenous peoples' rights. This constitutional protection has provided a strong foundation for advancing indigenous peoples' rights over the last 30 years, especially through the courts.**

79. **Federal and provincial governments have made notable efforts to address treaty and aboriginal claims, and to improve the social and economic well-being of indigenous peoples. Canada has also addressed some of the concerns that were raised by the Special Rapporteur's predecessor following his visit in 2003. Moreover, Canada has adopted the goal of reconciliation to repair the legacy of past injustices and has taken steps towards that goal.**

80. **But despite positive steps, daunting challenges remain. Canada faces a continuing crisis when it comes to the situation of indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginal claims remain persistently unresolved, indigenous women and girls remain vulnerable to abuse, and overall there appear to be high levels of distrust among indigenous peoples towards government at both the federal and provincial levels.**

81. **The numerous initiatives that have been taken at the federal and provincial/territorial levels to address the problems faced by indigenous peoples have been insufficient. Aboriginal peoples' concerns and well-being merit higher priority at all levels and within all branches of government, and across all departments. Concerted measures, based on mutual understanding and real partnership with aboriginal peoples, through their own representative institutions, are vital to establishing long-term solutions. To that end, it is necessary for Canada to arrive at a common understanding with aboriginal peoples of objectives and goals that are based on full respect for their constitutional, treaty and internationally-recognized rights.**

82. **The United Nations Declaration on the Rights of Indigenous Peoples, which has been endorsed by Canada, provides a common framework within which the issues faced by indigenous peoples in the country can be addressed.**

83. **On the basis of these conclusions and the observations in the present report, the Special Rapporteur recommends the following:**

1. Social and economic conditions

84. **The Government should ensure sufficient funding for services for indigenous peoples both on and off reserve, including in areas of education, health and child welfare, in the light of the rights and significant needs of indigenous peoples and the geographic remoteness of many indigenous communities; and insure that the quality of these services is at least equal to that provided to other Canadians.**

85. **Federal, provincial and aboriginal governments should improve upon their coordination in the delivery of services. Continued efforts should be made to support indigenous-run and culturally appropriate social and judicial services, and to strengthen and expand programmes that have already demonstrated successes.**

86. **Canada must take urgent action to address the housing crisis in indigenous communities both on and off reserve, especially communities in the north, and dedicate increased funding towards this end. In particular, the Government as a matter of urgency should work with Inuit representatives to ensure affordable, sustainable and adequate housing in the Arctic, and to design and construct housing to adapt to the region's environment and culture.**

87. **The Government should work with indigenous peoples to enhance education opportunities for them, and in particular should consult with indigenous peoples, through their representative institutions, to address any outstanding concerns they may have related to the proposed First Nations Education Act, including with respect to adequate funding.**

2. Truth and reconciliation

88. **The Government should ensure that the mandate of the Truth and Reconciliation Commission is extended for as long as may be necessary for it to complete its work, and should consider establishing means of reconciliation and redress for survivors of all types of residential schools.**

3. Missing women and girls

89. **Bearing in mind the important steps already taken to inquire into the disturbing phenomenon of missing and murdered aboriginal women and girls and to develop measures to address this problem, the federal Government should undertake a comprehensive, nationwide inquiry into the issue of missing and murdered aboriginal women and girls, organized in consultation with indigenous peoples.**

4. Self-government, participation and partnership

90. **Any existing legal barriers to the effective exercise of indigenous self-government, including those in the Indian Act, should be removed, and effective measures should be taken to build indigenous governance capacity. Canada should continue to engage in, and adequately fund, meaningful negotiations to transfer governance responsibilities to First Nations, Inuit and Métis governments and to financially support, at adequate levels, the development and operation of indigenous self-governance institutions.**

91. **In consultation with indigenous authorities, the Government should take measures to streamline reporting procedures under contribution agreements to alleviate unnecessary or overlapping reporting requirements.**

92. **New laws, policies and programmes that affect indigenous peoples should be developed in consultation and true partnership with them. The federal and provincial/territorial governments should not push forward with laws, policies or programmes where significant opposition by indigenous governments and leadership still exists.**

93. **With respect to legislation recently passed—including the Safe Drinking Water for First Nations Act, the Family Homes on Reserves and Matrimonial Interests or Rights Act, and the Jobs, Growth and Long-term Prosperity omnibus legislation—Canada should ensure that these laws are only implemented following meaningful consultation, with a view to obtaining the consent of the indigenous peoples to which they will apply, and with accommodation of their concerns.**

94. **Concerted efforts should be taken to address outstanding concerns related to gender discrimination in determining eligibility for registration under the Indian Act, and to adopt where possible a more flexible approach that takes into account indigenous peoples' own criteria for membership.**

95. **The federal Government should work with indigenous peoples in international border areas, in particular the Mohawk Nation at Akwesasne, to remove barriers to their free movement within their traditional territories.**

5. Treaty negotiation and claims processes

96. **Concerted measures should be adopted to deal with the outstanding problems that have impeded progress with the treaty negotiation and claims processes. Moreover, within these processes the Government should take a less adversarial, position-based approach than the one in which it typically seeks the most restrictive interpretation of aboriginal and treaty rights possible. In this regard, the Government should instead acknowledge that the public interest is not opposed to, but rather includes, aboriginal concerns.**

97. **Canada should take active measures to develop a procedure for addressing outstanding Métis land claims, to avoid having to litigate cases individually, and enter into negotiations with Métis representatives to reach agreements towards this end.**

6. Resource development

98. **In accordance with the Canadian Constitution and relevant international human rights standards, as a general rule resource extraction should not occur on lands subject to aboriginal claims without adequate consultations with and the free, prior and informed consent of the indigenous peoples concerned. Also, Canada should endeavour to put in place a policy framework for implementing the duty to consult that allows for indigenous peoples' genuine input and involvement at the earliest stages of project development.**

99. **Resource development projects, where they occur, should be fully consistent with aboriginal and treaty rights, and should in no case be prejudicial to unsettled claims. The federal and provincial governments should strive to maximize the control of indigenous peoples themselves over extractive operations on their lands and the development of benefits derived therefrom.**