

**Canada: Equality and Non-Discrimination with a Focus on Indigenous  
Women and Girls and Intersecting Forms of Discrimination**

**Submission to:  
The Committee on the Elimination of Discrimination Against Women**

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## INTRODUCTION

Indigenous women and girls living on Turtle Island in the area of Kanáta (Canada) experience destructive and intersecting forms of gender and racial discrimination that have been fostered, strengthened, and protected by historical and contemporary colonial structures, institutions, and legal orders. Despite being disproportionately impacted by endemic levels of violence and inequality, Indigenous women and girls remain resilient, fearless leaders who are holding the Canadian government accountable for its ongoing role in sanctioning and condoning the systemic human, international and Indigenous-rights violations and abuses that have been formally recognized as “genocide against Indigenous women, girls, and 2SLGBTQQIA people.”<sup>1</sup> With lived experiences of genocide and oppression, Indigenous women, girls, and 2SLGBTQQIA<sup>2</sup> people are working to transform the human rights framework in Canada and implement the integral legislative and policy changes that are needed to better advance and protect their Title and Rights, self-determination, and welfare.

UBCIC’s submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) will first examine how the intersecting forms of discrimination Indigenous women and girls experience today are indicative of the continuing practices and effects of colonialism and have been generated and shaped by Canada’s historical efforts to extinguish Indigenous cultures and assimilate Indigenous societies. The colonial treatment of Indigenous women as disposable, second-class citizens by Canada has led to normalized, systemic patterns of violence and abuse that intersect all systems and sectors, collectively working to undermine Indigenous self-determination. The submission will explore public spheres that these patterns are most prevalent in and will conclude that to effectively address forms of discrimination, Canada and other States will need to recognize that Indigenous self-determination is an Indigenous women’s and gender justice issue, and that as long as violence against Indigenous women goes unaddressed and unchecked, Indigenous self-determination will be destabilized.

### About UBCIC

The Union of British Columbia Indian Chiefs’ (UBCIC) mandate is to pursue the implementation, exercise, and recognition of our inherent Title, Rights, and Treaty Rights, and to protect our Lands and Waters through the exercise of our laws and jurisdiction. The UBCIC strengthens Indigenous Nations’ assertions of their Aboriginal Title, Rights, Treaty Rights and Right of Self Determination as Peoples, working collectively among Indigenous Nations in British Columbia (BC) as a cohesive advocacy body. UBCIC supports Indigenous Nations and communities to promote and protect Sovereignty within their traditional territories.

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<sup>1</sup> "Calls for Justice." National Inquiry into Missing and Murdered Indigenous Women and Girls. Last modified, 2019. [http://www.MMIWG2S-ffada.ca/wp-content/uploads/2019/06/Calls\\_for\\_Justice.pdf](http://www.MMIWG2S-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf)

<sup>2</sup> Due to the intent and guidelines of the submission, we will primarily focus on and refer to Indigenous women and girls in relation to the MMIWG2S crisis, but we do not exclude or forget the experiences of 2SLGBTQQIA Indigenous people who face additional layers of discrimination, and who are equally impacted by Canada’s colonial forces.

## THE FRAMEWORK FOR DISCRIMINATION: THE PERSISTING PRACTICES AND EFFECTS OF COLONIALISM

### The Sex-Based Discrimination of the Indian Act

The forms of discrimination that Indigenous women and girls experience today are linked to the continued practices and effects of colonialism in Canada and the Doctrine of Discovery, the dehumanizing and racist legal principle that “European countries extinguished Indigenous sovereignty and acquired the underlying title to Indigenous Peoples’ lands upon ‘discovering’ them.”<sup>3</sup> Since 1869, colonialist and patriarchal federal laws have sustained this doctrine of denial and worked to destroy the rights of Indigenous women, as well as their ties to their families, cultures, identities, and lands. These laws, most notably the *Indian Act* of 1876, created a damaging patriarchal system that “subjected Aboriginal women to loss of Indian status and the benefits of band membership, eviction from reserve home, and denial of an equal share of matrimonial property.”<sup>4</sup> Depriving Indigenous women of their status, land, and property, this system of forced assimilation shaped the conditions of discrimination, impoverishment, and violence that continue to place Indigenous women and their children at a severe economic and social disadvantage today.

Under the *Indian Act*, women were deprived of their Indian status upon marriage to a non-Indian man and prevented from transmitting status to their children. In addition, if an Indian man were to give up his status via the “voluntary” enfranchisement provisions in the *Indian Act*, his Indian wife and their children would automatically be deprived of their status. Indigenous women and their descendants were effectively robbed of their political voice and disentitled from the benefits of treaties, inherent rights, and a connection to their lands and territories as they were no longer able to reside on reserve. Conversely, Indian men were entitled to bestow status on their non-Indian wives, and their descendants benefited from the one-parent rule for the transmission of status and access to related rights and benefits.

Today, the Canadian government’s determination of status eligibility is still rooted in proximity to another status holder, under a tiered system.<sup>5</sup> Applicants are faced with authenticating their descent using government records to prove ‘adequate’ closeness in relation to another status holder. Ultimately, the sex-based discrimination fostered a destructive belief that has persisted into the present to exacerbate the human rights crisis that is Missing and Murdered Indigenous Women, Girls, and Two-Spirited People (MMWG2S): Indigenous women are second class persons with fewer rights and powers than their male counterparts. Multiple national and international human rights bodies and commissions, including the Inter-American Commission on Human Rights and the UN Committee on the Elimination of

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<sup>3</sup> Bruce McIvor. "Residential Schools and Reconciliation: A Canada Day Proposal." First Peoples Law. Last modified June 16, 2021. <https://www.firstpeopleslaw.com/public-education/blog/residential-schools-and-reconciliation-a-canada-day-proposal>.

<sup>4</sup> Sharon McIvor, *Aboriginal Women Unmasked: Using Equality Litigation to Advance Women’s Rights*, 16 Can. J. Women & L. 106, 107 (2004)

<sup>5</sup> Under the *Indian Act*, status Indians are registered with either 6(1) or 6(2) status. 6(1) is considered “full” status, while 6(2) only grants partial status. Those registered under 6(2) are unable to transmit their status onto their children unless the other parent is also registered as an Indian.

Discrimination against Women, have identified the sex discrimination of the *Indian Act* as a root cause of the MMIWG2S crisis and a key element of the Canadian genocide against Indigenous peoples.

Through a 2019 amendment to the Indian Act (*Bill S-3: An Act to amend the Indian Act in Response to the Superior Court of Quebec decision in Descheneaux*) Canada attempted to remove the core of the Act's sex discrimination. Through Bill S3, it was estimated approximately 270,000-450,000 women and their descendants became eligible for Indian status and the associated benefits.<sup>6</sup> However, since Bill S-3 came to force, and despite calls from UBCIC and other organizations to fast-track applications, only an estimated 10,800 First Nations people have been registered and granted status.<sup>7</sup> The Canadian government has not only made the application process unduly cumbersome and lengthy, but continues to negate the social and economic impacts that loss of status has had on women and their descendants, making no attempt at reparations to address the intergenerational impacts of these inequities. Canada also refuses to fully and meaningfully address the remaining sex-based inequities in the Indian Act, and the related, and ongoing, residual discrimination.

The government also continues to ignore the critical connections between sex discrimination in the *Indian Act* and the MMIWG2S crisis by failing to prioritize the restoration of status in its MMIWG2S National Action Plan. Released on June 3, 2021, the National Action Plan to end systemic racism and violence against Indigenous women, girls, and 2SLGBTQQIA people in Canada contains no detailed strategies, timelines, commitments, or new resources for the registration of the women and their descendants. Until the harmful, longstanding impacts of the *Indian Act's* sex discrimination are redressed and those newly entitled to status are registered, First Nations women and their children will continue to bear the brunt of the discrimination and disenfranchisement that has precipitated the disappearances and murders of the MMIWG2S crisis.

## **INTERSECTIONS OF DISCRIMINATION AND VIOLENCE AGAINST INDIGENOUS WOMEN AND GIRLS**

### The MMIWG2S Crisis and Colonial Practices

The MMIWG2S crisis represents a convergence of colonial violence, anti-Indigenous racism, and gender discrimination that continues to imperil the safety, wellbeing and dignity of Indigenous women and girls in Canada. The disappearances and murders that disproportionately impact them, as well as their families and loved ones, are a direct result of Canada's enforcement of colonial policies like the *Indian Act* that have perpetuated a cycle of poverty and intensified the barriers to employment, education, housing, health, and safety. Furthermore, the MMIWG2S crisis has been exacerbated by continued practices of colonialism that have left Indigenous women and girls vulnerable, including:

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<sup>6</sup> Indigenous Services Canada, *The Final Report to Parliament on the Review of S-3*, December 2020, online at: [https://www.pbodpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S3\\_EN.pdf](https://www.pbodpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S3_EN.pdf)

<sup>7</sup> Ibid.

- racial profiling, which is used as a colonial tactic of surveillance and leads to Indigenous peoples being unfairly criminalized and subjected to Indigenous and human rights violations<sup>8</sup>;
- biased policing and under-policing – although Indigenous women are overrepresented as victims of crime and violence and over-incarcerated in Canada’s prison system, a confluence of damaging racial stereotypes, racist attitudes, and misconceptions leads to police viewing them as “less worthy victims” and prosecuting crimes against them with “a biased eye and a lack of drive”<sup>9</sup>;  
the over-incarceration and overrepresentation of Indigenous women in the criminal justice system – Indigenous women in prisons often face overcrowded, unsanitary conditions with insufficient medical and mental health resources. In 2020, the Correctional Investigator of Canada, Dr. Robert Zinger, issued a scathing statement that reported that the proportion of Indigenous people behind bars had surpassed 30%, indicating a deepening “Indigenization” of Canada’s prison system that reflects “disturbing and entrenched imbalances,” with over Indigenous women accounting for 42% of the women inmate population in Canada, and representing the fastest growing federal inmate population. These trends are mirrored by the incarceration of Indigenous girls in youth custody centers<sup>10</sup> and must be examined alongside the disturbing correlation between Indigenous women and girls increasingly serving sentences for violent crimes while also being the most likely to experience violence or be murdered;
- birth alerts and the practice of separating children from “high-risk” mothers, due to racial profiling and anti-Indigenous racism, this practice disproportionately impacts Indigenous women and is associated with the overrepresentation of Indigenous children in the child welfare system. Prior to ending the practice of birth alerts, BC was aware this practice was likely unlawful, and breached privacy laws yet continued<sup>11</sup>. Several jurisdictions across Canada still continue the practice of birth alerts;
- inequities and barriers found in the driver’s licensing system – although access to driver’s licensing and training is a social determinant of Indigenous welfare and can lead to improved employment and education outcomes, it remains inaccessible to many Indigenous communities, is implicated in a colonial cycle of disempowerment and exclusion, and is linked to the MMIWG2S crisis as Indigenous women and youth, without access to a driver’s license, are vulnerable targets for abuse and violence as they hitchhike along highways<sup>12</sup>;
- the mistreatment and prolonged isolation of youth in custody – a recent report released by the BC Ombudsperson revealed that youth custody centers in BC are upholding a racist, colonial and

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<sup>8</sup> Refer to the recent Maxwell Johnson case. Mr. Johnson and his 12-year-old granddaughter were racially profiled and wrongfully detained at a BMO branch in Vancouver in December of 2019.

<sup>9</sup> Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Toronto: Ipperwash Inquiry, 2005) at note 87 at p 37.

<sup>10</sup> Overrepresentation: The Nature and Extent of the Problem - Research and Statistics Division - Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses

<sup>11</sup> A birth alert is the practice of placing a flag on a woman’s hospital records, which require the hospital to notify child welfare authorities once the child is born.

<sup>12</sup> For a more in-depth look into the impacts and implications of driver’s licensing, please refer to The Road to Reconciliation: UBCIC Discussion Paper on Driving Licensing written by Lucy Sager with the support of UBCIC.

oppressive framework to control and perpetuate violent abuse against Indigenous youth, particularly Indigenous girls. The report found that youth were subjected to repeated and prolonged periods of solitary confinement, and experienced repeated, debasing practices of being physically restrained, having their clothes forcibly removed, and being denied access to hygiene or blankets;

- insufficient funds, resources, and supports – many supports, services, and resources that are critically needed to meet the needs of Indigenous women, including the needs of survivors of violence and family members of MMIWG2S victims, are underfunded by the government and operate without culturally appropriate and trauma informed frameworks; and
- sidelining and exclusion of Indigenous women, organizations, and expertise – Canada has consistently failed to prioritize the inclusion of Indigenous women’s organizations and other critical groups – including representatives of women who are incarcerated and women in survival sex economies– in the process of developing the MMIWG2S National Action Plan (NAP).<sup>13</sup> Through the exclusion of autonomous Indigenous women groups from NAP Working Groups and key decision-making processes, their interests could not be represented or advanced, their incomparable depth of experience and knowledge was ignored, and a patriarchal model that rests upon the colonial exclusion of Indigenous women was replicated.

As has been made evident above, intersecting colonial processes, practices, and policies feed into and build off one another, fueling and normalizing a culture of apathy, racism, and intolerance that targets, controls, and harms Indigenous women and girls in Canada. This culture and its patterns of violence and discrimination not only has exacerbated the MMIWG2S crisis but works across all level of society to destabilize the collective Title and Rights, self-determination, and self-governance of Indigenous peoples, and more specifically, Indigenous women.

#### Health Care and Healing Supports, Services, and Resources

Unfortunately, systemic racism and colonial violence is deeply entrenched within Canada’s health care system, and has negatively impacted the provision of services, supports, and resources to Indigenous women seeking to heal and recover from violence, trauma, exploitation, and/or abuse.

Since colonial settlement, the health care system has been used as another institutional weapon to police and control the bodies of Indigenous women. Hospitals are the site of Canada’s forced and coerced sterilization of Indigenous women,<sup>14</sup> the place where children are often forcibly removed from their mothers, and a traumatizing institution that Indigenous survivors of sexual assault and violence are brought for, but often denied, treatment. The full reality of the ongoing discrimination and racism underlying Canada’s health care systems was recently exposed by Dr. Mary Ellen Turpel Lafond in her independent investigation into anti-Indigenous racism in British Columbia’s health care system. After

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<sup>13</sup> Throughout the NAP development process, the Coalition on Missing and Murdered Indigenous Women and Girls, an alliance of grassroots organizations and individuals of which UBCIC is a part of, has [called](#) for governments to prioritize and advance the voices of Indigenous women, girls, and 2SLGBTQQIA+ individuals

<sup>14</sup> Researchers have [uncovered sterilizations](#) performed on Indigenous women at 14 different federally operated Indian Hospitals across Canada

significant consultations with nearly 9,000 people, on November 30, 2020, a final report entitled [In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in BC Health Care](#) was released that affirmed the existence and impacts of anti-Indigenous racism and described necessary pathways for change in BC health care.

In addition to the *In Plain Sight Report*, the [Calls for Justice](#) affirm and address the debilitating discrimination Indigenous women and girls encounter at all levels of society. Released by the National Inquiry into MMIWG2S on June 3, 2019, the *Calls for Justice* are 231 actions – to be treated by all governments and Canadians as legal imperatives – to end the genocide against Indigenous women and girls. These Calls collectively form a strong foundation of support and action for Indigenous victims of violence and the family members and loved ones of murdered or disappeared persons; they address the need for measures to uplift and empower Indigenous women in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*.

UBCIC has been actively working with like-minded organizations and individuals to implement the *Calls for Justice* – in particular, Calls 3.1-3.7, 7.2, 7.8, which are centered on addressing the gaps in health and wellness programs and supports by providing permanent, Indigenous-centered, culturally appropriate, and no-barrier health and wellness services so Indigenous women and girls can heal from all forms of violence and unresolved trauma. Far too many Indigenous communities, particularly those that are rural and remote, do not have the resources or the capacity to respond to sexual violence experienced by Indigenous women, girls and gender diverse persons.<sup>15</sup> To support survivors access safe, healing pathways that are free from stigma and discrimination, UBCIC is currently working to ensure Indigenous communities have access to the critical, specialized care of a forensic or sexual assault nurse examiner (SANE), and that Indigenous nurses seeking SANE training are properly supported. SANE practitioners play a critical and essential role in administering Sexual Assault Evidence Kits and helping survivors take the first steps towards healing and obtaining justice, and more services like it need to be created and made accessible as part of Canada's work to rid health care systems of their discriminatory and colonial frameworks.

#### Law Enforcement, Land Rights, and Environmental Stewardship

The interplay between law enforcement, land rights, and environmental stewardship is one constrained by a colonial framework of power dynamics and discrimination – altogether, they form another area in which violent policing and the criminalization of Indigenous women and girls is used to further the State's two-fold project of controlling land, territories, and resources, and undermining the inherent Title and Rights, jurisdiction, and sovereignty of Indigenous Nations.

Since time immemorial, Indigenous women have assumed powerful and sacred roles as Elders, matriarchs, knowledge keepers, language speakers, and land defenders. Today, they are on the frontlines working to protect the environment within their territories from climate change impacts and

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<sup>15</sup> With COVID-19, BC has seen an alarming spike in cases of violence in inter-personal relationships, particularly with women as victims, and gendered-violence more generally, as well as reports of attempted abductions and human trafficking terrorizing Indigenous women and girls.

the destructive consequences of resource extraction and emissions intensive projects. However, their role in resisting fossil fuel development as a climate mitigation strategy has been delegitimized by industry and state interests. Today, they face excessive use of force by policing authorities at Indigenous-led land protests, undergo state surveillance and scrutiny in their travels, confront coercive methods by state and non-state actors to create division amongst Indigenous communities, endure vilification, hate speech, blackmail, harassment and racist attacks<sup>16</sup>, and experience a systemic lack of access to justice while land dispossession continues. The ongoing criminalization of Indigenous land and cultural rights defenders in Canada is vested in the legal fictions of state sovereignty of which Indigenous Title, Rights, legal systems have no part in, and of which Indigenous women in particular, have no power or influence over. Indigenous people continue to be excluded from decision-making processes on industrial projects that impact Indigenous Rights and Title and where participation does occur, Indigenous interests are typically viewed as “stakeholder” interests, to be balanced against the commercial interests of project proponents.

No where is the de-legitimization and violation of Indigenous women rights, as a tool used since colonial to disenfranchise and dispossess Indigenous peoples of their lands and resources, more apparent in the creation of industrial camps, or what has become known as “man camps.” Man camps are temporary housing facilities made for predominantly male workers on resource development projects in the oil, pipeline, mining, hydroelectric, and forestry industries. [Research and reports](#) have proven and shown there is a direct correlation between these encampments and violence against women. In effect, man camps are a microcosm of the systemic discrimination and violence that fuels the national MMIWG2S crisis; they are spaces created to serve the colonial project of land dispossession and resource extraction, and in which elements of a hyper-masculine culture and a colonial mindset combine to threaten and oppress Indigenous women, families, and communities. In recognition of the devastating impacts man camps have upon the security, on February 21, 2018, UBCIC formally endorsed the Secwepemc Women’s Warrior Society and the Tiny House Warriors’ [Women’s Declaration Against Kinder Morgan Man Camps](#). As man camps illustrate, the Canadian state has long created and supported structures that operate through coercion and violence against Indigenous land defenders and communities, and more specifically, Indigenous women and girls.

Ultimately, as various types of resource development proceed unabated within Indigenous territories, long standing Indigenous land rights issues will persist, resulting in more land dispossession, human rights violations, and threats to Indigenous cultural heritage. Until they are valued and prioritized, Indigenous women and girls will continue to bear the brunt of these consequences, as well as the impacts climate change is having upon their land-based languages, cultures, and traditions.

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<sup>16</sup> On April 19, 2020, Kanahus Manuel, an Indigenous land defender and member of the Secwepemc First Nation, and a male Indigenous land defender were in The Tiny House Warriors camp when they were physically assaulted and subjected to racist and misogynistic comments from intruders. The Tiny House Warrior Camp is located in unceded Secwepemc territory in the interior of B.C. and was established in opposition to the ongoing expansion of the Trans Mountain pipeline and construction of work camps.



**CONCLUSION:**

Indigenous Self-Determination as a Gender Justice Issue: The Path Forward

UBCIC's submission has examined colonial practices that aim to discriminate, control, and oppress Indigenous women as a part of Canada's overarching attempts to subordinate and challenge the collective Title and Rights, self-determination, and traditional ways of Indigenous peoples. The systemic violence, abuse, exploitation, and coercion that Indigenous women and girls face at all levels of society, especially in the health care, criminal justice, and child welfare systems, has been indelibly shaped by the historical and ongoing state laws, policies, and practices that permit genocide against Indigenous peoples in Canada. Instead of repudiating the Doctrine of Discovery and the fictitious principle that the lands of Indigenous peoples were *terra nullius*, Canada has continued to advance it by denying and depriving Indigenous women of their self-determination and Title and Rights.

Despite its commitment and efforts to advance reconciliation with Indigenous peoples, including its ongoing work to implement a MMIWG2S National Action Plan and action Bill C-15, *The United Nations Declaration on the Rights of Indigenous Peoples Act*, the Canadian government has consistently and systematically excluded Indigenous women and girls from critical decision-making processes and has not afforded them the respect and recognition they deserve as individuals with invaluable expertise and guidance. To truly eliminate discrimination and decolonize its treatment of Indigenous women and girls, Canada must reframe self-determination as a human right and an Indigenous women's issue, so that any violence against Indigenous women and girls is viewed and treated not as a separate and disconnected issue of gender politics, but as an attack on the collective social, economic, political, and civil rights of Indigenous peoples in Canada. Generally, states and governments adhere to a narrow, limiting conception of self-determination as a right to independent nationhood. When we de-center self-determination from this perspective and view it as a human right that allows both the individual and the collective to achieve autonomy, freedom, and the full realization of their Title and Rights, the safety and welfare of Indigenous women and girls become integral to its success.

In moving forward, Canada needs to support Indigenous peoples in developing and implementing a human rights framework that specifically addresses gender-specific human rights violations, its ties to continued colonial practices, and its impacts on individual and collective rights. The bottom line is this: Indigenous self-determination cannot be achieved without Indigenous women and girls flourishing and thriving – uninhibited by systems of violence, discrimination, and abuse.