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# Interim Report of Canada on the *International Covenant on Civil and Political Rights*

# 1. Introduction

On July 7 and 8, 2015, a Canadian delegation appeared before the United Nations Human Rights Committee, for the review of Canada’s sixth periodic report on the *International Covenant on Civil and Political Rights*. The Committee issued its Concluding Observations for Canada on August 13, 2015.[[1]](#footnote-1)

At paragraph 21 of its Concluding Observations, the Committee requested follow-up information in response to the recommendations made by the Committee in paragraphs 9, 12, and 16. Canada provides the following information in response.

This report is on implementation by all orders of government. Any reference to “the Government of Canada” is a reference to the Canadian federal government, while a reference to “Canada” is generally a reference to the federal, provincial and territorial governments combined. Any reference to a province or territory (for example, Quebec, Manitoba, or the Yukon) is generally a reference to its government.

# 2. Recommendation 9: Murdered and missing Indigenous women and girls

*The State party should, as a matter of priority, (a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women’s organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators and provide reparation to victims; and (d) address the root causes of violence against indigenous women and girls.*

Canada is committed to addressing the serious issue of violence against Indigenous women and girls in Canada as a matter of priority. This ongoing national tragedy must be brought to an end.

## 2.1. Launch of a National Inquiry

At the federal level, the Minister of Indigenous and Northern Affairs and the Minister of Justice and Attorney General of Canada, with support from the Minister of Status of Women, launched a national pre-inquiry process into Missing and Murdered Indigenous Women and Girls, starting in December 2015, to seek recommendations on concrete actions that governments, police services, and others can take to address and prevent violence against Indigenous women and girls. The launch of an overall Inquiry process was also part of the Government of Canada’s commitment to implementing the recommendations of Canada’s Truth and Reconciliation Commission. The Inquiry is an important mechanism from which to examine and address the intergenerational trauma caused by the Indian residential school system that operated in Canada for more than a century until 1996. The Inquiry is also a part of Canada’s commitment to a renewed nation-to-nation and Inuit-to-Crown relationship with Indigenous Peoples based on recognition of rights, respect, co-operation, and partnership, and to making real progress on issues like community safety, policing, housing, employment, health, child welfare, and education.

The Government of Canada understood that designing an effective full national Inquiry into missing and murdered Indigenous women and girls would only be possible after hearing from people directly affected, including those who have survived violence, the families and loved ones of victims, Indigenous communities and organizations, including Indigenous women’s organizations and others. Accordingly, a national pre-inquiry engagement process with survivors, families, loved ones, Indigenous organizations, and provinces and territories took place between December 2015 and February 2016. Approximately 2,160 people participated in 18 engagement meetings held across the country. In addition to the in-person engagement sessions, all Canadians were invited to provide their input online or via mail.More than 4,100 online submissions and more than 300 letters and written submissions were received between December 2015 and February 2016. Summaries of what the government heard during the engagement process are publicly available.[[2]](#footnote-2)

The Government of Canada also provided funding to five national Indigenous organizations (representing First Nation, Métis and Inuit) and Indigenous women’s organizations to hold their own pre-inquiry engagement sessions. The organizations developed submissions with recommendations regarding the design, scope and mandate of the Inquiry. Receiving input for consideration from these organizations was a crucial part of the pre-inquiry process, as many of these organizations have been calling for an Inquiry for more than a decade. The Native Women’s Association of Canada’s *Sisters in Spirit Initiative*, which was supported by federal funding, laid the groundwork for a national Inquiry.

The Government of Canada is also committed to taking into account the recommendations of expert bodies in the design of the national Inquiry, including the United Nations Committee on the Elimination of Discrimination against Women, which has conducted its own inquiry on this issue. The Government’s goal was to create an inquiry that balances a diversity of approaches to achieve concrete recommendations.

Wednesday, August 3, 2016 marked a significant milestone for the National Inquiry into Missing and Murdered Indigenous Women and Girls, when the Government of Canada announced the appointment of five Commissioners to lead the independent Inquiry, as well as its Terms of Reference, and handed over all the input gathered during the pre-inquiry process to the independent Commission. The Inquiry will be truly national and will be moving forward with the support of provinces and territories who have committed to legally adopt the Terms of Reference under their respective Public Inquiries Acts. Because the Inquiry is national, it will be able to look at systems and institutions that the participating provinces and territories are responsible for, such as policing and child welfare, and make meaningful recommendations related to these areas. The Inquiry time line is from September 1, 2016 to December 31, 2018. The Commission will be provided $53.8 million by the federal government over the two years to complete its mandate. And, parallel to the Inquiry, the Department of Justice will provide $16.17 million for specialized victim services and the creation of Family Information Liaison Units to assist families, loved ones and survivors with getting information and support.

## 2.2. Coordination of Law Enforcement and Federal, Provincial and Territorial Responses

Canada has taken note of the recommendation of several treaty bodies that it must ensure better coordination among different levels of government in tackling violence against Indigenous women and girls. Since the release of the Committee’s Concluding Observations, in July 2015, there has been improved collaboration, consensus, and coordination among federal, provincial and territorial governments, including law enforcement agencies, to work on addressing and ending violence against Indigenous women and girls.

In 2015 and 2016, Canada’s federal, provincial and territorial governments participated in the first and second meetings of the National Roundtable on Missing and Murdered Indigenous Women and Girls. The National Roundtable is a vital forum for Canadian governments to engage with non-governmental stakeholders on violence against Indigenous women and girls. At the first National Roundtable held in Ottawa, Ontario in February 2015, federal, provincial, and territorial governments, national Indigenous organizations, and representatives from families of missing and murdered Indigenous women met to identify areas for action on the issue of violence against Indigenous women. They also endorsed the *Framework for Action to Prevent and Address Violence Against Indigenous Women and* Girls. The Framework identified three priority areas for action: prevention and awareness, community safety, and policing measures and justice responses.

At the February 2016 Roundtable, held in Winnipeg, Manitoba, all participants, including governments, committed to continued collaboration and action to prevent and address violence against Indigenous women and girls, including in the context of the National Inquiry. Additionally, the participants at the Roundtable agreed to:

* support the development of Indigenous-led cultural competency, anti-racism and anti-sexism training programs for all public servants across governments, police and the justice system to include components focused on Indigenous history, impacts of policies, legislation and historical trauma;
* create and implement a set of common performance measures to assess progress toward addressing and reducing the socio-economic gaps experienced by Indigenous peoples;
* work collaboratively to improve communication and coordination between Indigenous families and: communities, victim services, policing, prosecutions, women’s groups, anti-violence groups, and shelter workers, and
* implement the proposed Canada-wide prevention and awareness campaign focused on changing public perception and attitudes to help end violence against Indigenous women and girls.

Moreover, in January 2016, Canada’s federal, provincial and territorial Ministers Responsible for Justice and Public Safety approved the *Justice Framework to Address Violence against Indigenous Women and Girls* (the Justice Framework).[[3]](#footnote-3) The Justice Framework is a strategic document which identifies principles and priorities that will help to guide Ministers’ focus as they take action with Indigenous Peoples and other key partners to improve how the justice system prevents and responds to the violence. The guiding principles identified in the Framework include reconciliation and building trust, respect for human rights, community-based solutions, and changing attitudes and behaviours. The Ministers agreed that the Justice Framework, which is informed by numerous reports and discussions with Indigenous Peoples, can be updated to incorporate additional findings, including those from the National Inquiry.

### *Law enforcement cooperation*

Canadian law enforcement agencies continue to collaborate in a variety of ways to share information and expertise related to the issue of violence against Indigenous women and girls.

Project Devote is a key example of such collaboration. This task force is comprised of investigators from Winnipeg Police Service and the RCMP as well as civilian analysts who collaborate to address unsolved historical homicides and missing person cases, where foul play is suspected, involving exploited and at risk persons. Some of the cases of missing and murdered Indigenous women identified in the RCMP’s *National Operational Overview* are being investigated by Project Devote**.**

Another example of cross-jurisdictional cooperation involves the National Centre for Missing Persons and Unidentified Remains (NCMPUR), located at the RCMP, which assists law enforcement, medical examiners and chief coroners across the country with missing persons and unidentified remains investigation.

Canada looks forward to examining any concrete recommendations issued by the National Inquiry on ways to increase federal, provincial and territorial cooperation, including by law enforcement agencies.

## 2.3. Ongoing Efforts to Better Investigate, Prosecute and Punish Perpetrators and Provide Reparation to Victims

While the National Inquiry is underway, Canada continues to take action to prevent violence, support Indigenous survivors and victims, protect Indigenous women and girls from violence, and investigate and punish violent offences. The federal government continues to invest in these areas, including support for community-based family violence prevention initiatives.

By way of example, the Government of Canada has committed to expanding Canada’s existing network of shelters and transition houses to ensure that no survivor of family violence is left without a place to turn. In this respect, the Government of Canada continues to deliver funding to support the construction and repair of shelters both on- and off-reserve. Since 2011, contributions of more than $64 million supported 2,400 shelter units for victims of domestic violence. The 2016 federal budget provides $89.9 million over two years, starting in 2016-17, for the construction and renovation of over 3,000 shelters and transition houses.

The 2016 federal budget has earmarked $10.4 million over three years to provide increased safety and security to victims of domestic violence in First Nation communities, which is expected to support the construction of five new shelters and renovation of up to 20 existing shelters on-reserve. Budget 2016 also proposes up to $33.6 million over five years, beginning in 2016-2017, and up to $8.3 million ongoing, in additional funding to better support shelters serving victims of family violence in First Nation communities.

The Royal Canadian Mounted Police (RCMP) remains committed to solving outstanding cases of missing and murdered Indigenous women. In June 2015, the RCMP released an update to its *National Operational Overview*, the most comprehensive account of police reported incidents involving missing and murdered Indigenous women and girls.[[4]](#footnote-4) The RCMP has also updated its reporting policies and practices to ensure better data collection on the Indigenous origin of victims of violent crimes.

Moving forward, the Government of Canada has pledged to review existing gender- and culturally sensitive training policies for federal front-line law enforcement officers to ensure that they are strong and effective. The Government of Canada has also committed to toughening criminal laws and bail conditions in cases of domestic assault.

Provincial and territorial governments also continue to take action to combat violence against Indigenous women.

In February 2016, the Ontario government released *Walking Together: Ontario's Long-Term Strategy to End Violence Against Indigenous Women*, which outlines actions to prevent violence against Indigenous women and reduce its impact on youth, families and communities. The government has committed $100 million over three years in new funding to support implementation of the strategy, which it developed in collaboration with Indigenous partners of Ontario's Joint Working Group on Violence Against Aboriginal Women. The new strategy builds on the existing work of Indigenous partners, community organizations and government to raise awareness of and prevent violence; provide more effective programs and community services that reflect the priorities of Indigenous leaders and communities; and improve socio-economic conditions that support healing within Indigenous communities.

In 2015, British Columbia released the *Vision for a Violence Free BC* Strategy, which combines immediate actions with a long-term vision to end violence against women in the province. Through the Strategy, British Columbia has already invested over $1.6 million to support projects focused on addressing violence against Indigenous women and girls.

In 2015-2016, the Yukon provided $200,000 in funding to five culturally relevant initiatives designed and developed by and for Indigenous women as a key strategy in taking collective action on violence against Indigenous women. These five projects were: *A Safe Place* (Victoria Faulkner Women’s Centre); *Building a Circle of Response-Based Practice* (Liard Aboriginal Women’s Society); *Prevention of Violence against Women in Pelly Crossing* (Selkirk First Nation); *Walking with Our Sisters Community Programming* (Kwanlin Dün Cultural Centre); and *Women of Wisdom* (Skookum Jim Friendship Centre).

In 2015, the governments of Quebec and Ontario provided financial support for gatherings of loved ones of missing or murdered Indigenous women in their respective provinces. Both events gave these loved ones an opportunity to present their views on how to better prevent and address violence against Indigenous women. Funding from the provinces also enabled the organizers of these events, Québec Native Women and the Chiefs of Ontario, to release reports recommending solutions to the issue.

In November 2015, the Government of Quebec implemented several initiatives to provide support to victims and their families confronted with violence. Particularly, Quebec invested more than $6.1 million to support the development of social projects in urban areas. Quebec also implemented initiatives targeted to strengthen trust between the police and Indigenous peoples of Quebec and to better inform and support victims in reporting a failure to meet obligations.

Additionally, a conference of elected Indigenous women, held in February 2015, brought together 60 elected women from Indigenous nations of Quebec and 33 female parliamentarians from the Quebec National Assembly. The meeting aimed to lay the foundations for a synergy between the two elected groups and to promote better understandings of the issues and challenges of each. Following the conference, a solidarity protocol was signed between the Assembly of First Nations of Quebec and Labrador and the Circle of Women parliamentarians of Quebec. This protocol aims to create lasting ties in an effort to foster respectful exchanges based on shared values of equality, peace and social justice.

In May 2015, the Committee on Citizen Relations of the Quebec National Assembly adopted an initiative on the living conditions of Indigenous women in connection with sexual assault and domestic violence. The numerous consultations helped to better understand the living conditions of Indigenous women and to exchange views with experts and stakeholders, including the Quebec Native Women and the Assembly of First Nations of Quebec and Labrador. An interim report, tabled last May, presents possible solutions proposed by Indigenous peoples.

The Government of Manitoba hosted national gatherings focused on violence against Indigenous women and girls, including the Wiping Away the Tears Gathering, for families of missing and murdered Indigenous women and girls, in September 2015, and the National Justice Practitioners’ Forum, for practitioners from police agencies, the criminal justice system and victims services, in January 2016.

## 2.4. Ongoing Efforts to Address the Underlying Causes of Violence against Indigenous Women and Girls

While the National Inquiry is underway, Canadian governments are committed to tackling the many underlying causes of violence against Indigenous women and girls that have been identified in past studies and reports. The 2016 federal Budget proposes to invest $8.4 billion over five years, beginning in 2016–17, to improve the socio-economic conditions of Indigenous peoples and their communities and bring about transformational change.

The Government of Canada is committed to making decisions supported by the best data available to improve the well-being of all Indigenous peoples, and is working to ensure that key sources of data on Indigenous people are maintained and that longstanding data gaps are addressed. In this regard, the Government of Canada reinstated the mandatory long-form census, which is one of the only sources of on reserve and community-level data. In addition, the Government of Canada supports the Surveys on Aboriginal People program, which is providing unprecedented data that are of mutual interest and benefit to Indigenous peoples and the Government of Canada.

### *Child welfare services*

Many reports by expert bodies and civil society have identified inadequate socio-economic conditions as an underlying cause of the disproportionate number of Indigenous children taken into care by child welfare authorities. Indigenous children and youth in the child welfare system are often subjected to negative physical and mental health status, and increased risks of experiencing violence, gang involvement, sexual exploitation, human trafficking, homicide, suicide, and involvement with criminal justice system. Canada recognizes the impact that separating Indigenous children from their parents can have on families and communities, and acknowledges the role that these systemic issues can play in perpetuating the cyclical involvement in the child welfare system.

While the Inquiry is underway, the delivery of child welfare services to Indigenous families and improving the safety and well-being of First Nations children on reserve will remain priorities for Canadian governments. As a starting point, the 2016 federal Budget provides $634.8 million over five years, beginning in 2016–17, to program stability and expand prevention-based programming under the First Nation Child and Family Services Program (FNCFS).

Changes at the federal level are also underway in response to the recent Canadian Human Rights Tribunal (“Tribunal”) decision in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada.* On January 26, 2016, the Tribunal ordered the federal government to cease its discriminatory practices, and to reform the FNCFS Program and the 1965 Welfare Agreement with Ontario.[[5]](#footnote-5)

On April 26, 2016, the Tribunal released its decision on immediate relief, addressing immediate reforms to the FNCFS Program and Jordan’s Principle, a child-first principle that applies where there is disagreement over which level of government is responsible for providing a service.[[6]](#footnote-6) The Tribunal’s ruling on immediate reform includes important measures to address immediate relief and program reform. The federal government has already begun to work with the First Nations Child and Family Caring Society, the Assembly of First Nations, and other organizations to better meet the needs of Indigenous children and youth in care.

The Tribunal has made it clear that the system in place today is failing. The federal government agrees that it can and must do better. First Nation communities deserve adequate program supports and funding to ensure the needs of our most vulnerable members of society, First Nations children on-reserve, are being met.

### *Child welfare services: Enhanced cooperation and prevention-based programming*

Because the federal, provincial and territorial governments share jurisdiction over child welfare services, close cooperation between the two levels of government is required. Governments at all levels are also moving towards closer cooperation with Indigenous communities. A newly-established Federal-Provincial/Territorial Indigenous Children and Youth in Care Working Group has been developed and is working to address the overrepresentation of Indigenous children in care. A National Indigenous Child Welfare Summit is being planned for autumn 2016 and will possibly precede the Federal-Provincial/Territorial Ministers Responsible for Social Services Forum.

Canadian governments at all levels continue to shift their focus away from a protection-based approach to prevention-based programming, with the ultimate goal of reducing the number of children in care. This shift is based on mounting social science evidence demonstrating that a prevention-focused approach to child and family services, based on early intervention, helps to keep families together, and yields better results for children and families. So far, studies done at the federal level have shown that the adoption of a prevention-focused approach has reduced the number of children in foster care and group home care, and has increased the numbers of children in alternative care, such as kinship care.

The federal FNCFS Program is moving forward incrementally with provincial, territorial and First Nations partners. It is anticipated that tripartite tables will re-convene to initiate engagement on FNCFS program reform.

### *Child welfare services: Culturally sensitive services*

In a similar vein, governments at all levels are working to ensure that child welfare services provided to Indigenous families are culturally appropriate and responsive to their needs. Mechanisms to achieve these objectives include increased reliance on kinship placements, and the recognition and promotion of customary care.

The Government of Ontario, for instance, has introduced several different programs and policies aimed at improving the cultural relevance of its child welfare services. The Government of Ontario has also provided funding to the Association of Native Child and Family Services Agencies of Ontario to develop a culturally appropriate home study tool. If adopted, the tool could help to increase the number of Indigenous homes in which Indigenous children in need of protection are placed. This work is expected to be completed in 2016.

The Government of Quebec established, in different cities with a strong Indigenous presence, local roundtables on accessibility services for urban Indigenous peoples. These roundtables will bring together short-term regional and local partners to improve and facilitate collaboration and complementarity of services. The challenge of offering safe and culturally appropriate services to Indigenous peoples is at the core of the discussion.

Canada also looks forward to reviewing any recommendations by the National Inquiry on the issue of child welfare.

### *Education of Indigenous children*

Canada recognizes that responding to gender-based violence, including violence against Indigenous women and girls, starts with a strong focus on prevention, and that education plays an important role in this regard. The Government of Canada is committed to working in partnership with First Nations to support quality on-reserve education systems. This is a crucial part of the federal response to address the root causes of violence against Indigenous women and girls.

The Government of Canada will make substantial investments in primary and secondary education on reserve over the next five years, totaling $2.6 billion, starting in 2016-17. This includes funding to address immediate needs and to keep pace with cost growth over the medium term, in addition to investments in language and cultural programming, education research and innovation, literacy and numeracy programs, special needs education, and establishing education systems on reserve, which will contribute to improved education outcomes.

Another essential component of a student’s education is having a safe and healthy place in which to learn. The Government of Canada is committed to investing in the building and refurbishing of First Nation schools to help improve educational outcomes for First Nation students. The academic achievement of First Nations children, as well as their health and well-being, depends in large part on the quality of their schools. The 2016 federal budget has earmarked $969.4 million over five years in First Nation education infrastructure, for the construction, repair and maintenance of First Nations school facilities.

To complement these investments in First Nations elementary and secondary education, the federal government plans to invest $29.4 million in 2016-17 for repairs and renovations to early learning and child care facilities. Building on these investments, the federal government also proposes to provide $100 million in 2017-18 towards Early Learning and Child Care on reserve. Government officials will be engaging with Indigenous organizations and parents to determine the best approach to delivering high-quality early learning and child care on reserve.

Provinces and territories also continue to improve their education systems to ensure better outcomes for Indigenous children. For instance, the government of Manitoba introduced amendments in fall 2015 to its *Education Administration Amendment Act* that enshrined a new First Nations, Métis, and Inuit Education Policy Framework. The amendments to the Act also outline criteria for ensuring that the curriculum reflects the perspectives of First Nations, Métis and Inuit peoples, and measures to be implemented to support the professional development of teachers and others who participate in classroom activities in this regard.

### *Employment*

Improving employment outcomes for Indigenous people, including women, is another important priority for Canada. Canada acknowledges that many Indigenous people continue to face multiple barriers to employment due, in part, to low education levels compared to the general population, gaps in job skills, and limited job opportunities in remote areas.

Through the First Nations and Inuit Youth Employment Strategy (FNIYES), the Government of Canada supports initiatives to provide First Nations and Inuit youth, between the ages of 15 and 30, with work experience, information about career options, and opportunities to develop skills to help gain employment and develop careers. Since its launch in 1997, the FNIYES has provided close to 150,000 opportunities to First Nations and Inuit youth. More than 600 First Nations and Inuit communities design and implement projects each year.

As part of its commitment to support Indigenous labour market participation, the Government of Canada is developing plans for improved Indigenous labour market programming, including potential renewal and expansion of funding for the Aboriginal Skills and Employment Training Strategy (ASETS). In the 2016 federal budget, the Government of Canada announced an investment of $15 million over the next two years ($5 million in 2016-2017 and $10 million in 2017-18) to better align job training with community needs. Employment and Social Development Canada (ESDC) will consult with Indigenous leaders and organizations, employers and other key stakeholders to identify potential improvements to the programming.

ASETS is funded at $295 million per year ($300 million in 2016-17 and $305 million in 2017-18 including new Budget 2016 announcements), and provides a continuum of services ranging from pre-employment training (e.g. literacy, numeracy and other essential skills) to more advanced training-to-employment for skilled jobs. Over the period April 2010 to May 2016, approximately 269,000 clients were served, of which, approximately 98,300 individuals became employed and approximately 47,520 returned to school. Of the clients served, approximately 47% were women.

The Government of Canada also continues to collect data on the reach and effectiveness of its programs. Recent data from Indigenous labour market programs, specifically ASETS, the Skills and Partnership Fund (SPF) and the First Nations Job Fund (FNJF), show that a significant number of clients served by these programs are women.

SPF is funded at $50 million per year, and is a proposal-based program that works with employers to provide training for Indigenous people to fill in demand jobs. Over the period of April 2012 to May 2016, approximately 25,700 clients were served, of which, approximately 10,530 became employed and approximately 1,350 returned to school. Of the clients served, approximately 35.5% were women.

The FNJF, launched in 2013, is a component of the federal government’s on-reserve Income Assistance Reform initiative, and is funded at $109 million over four years (2013-14 to 2016-17). It provides job training and skills development services to First Nations youth living in participating on-reserve communities who are aged 18-24, deemed ready for work within one year, and receiving income assistance. Over the period April 2013 to May 2016, approximately 2,190 clients were served through the FNJF, of which approximately 520 individuals became employed and approximately 120 returned to school. Of the clients served, approximately 42.3% were women.

### *Housing*

The 2016 federal budget provides significant funding for community infrastructure, including housing. The Government of Canada recognizes that access to safe and affordable housing is essential to developing healthier, more sustainable Indigenous communities, and improving their social well-being.

The Government of Canada is engaging in a renewed, respectful, and inclusive nation-to-nation process and is committed to working in collaboration with First Nations and other stakeholders to improve essential physical infrastructure, including housing. The unique housing needs and challenges in Northern and Indigenous communities warrant tailored approaches. In spring 2016, the Department of Indigenous and Northern Affairs Canada will launch an engagement process with First Nations to enhance housing outcomes across their communities. Consultations on a National Housing Strategy will also explore new approaches to improve housing outcomes for First Nation, Inuit and Métis peoples and Northern communities.

As a first step to tackle this pressing issue, the 2016 federal budget announced $554.3 million in funding over two years to address immediate housing needs on reserve. The focus for this investment will be on communities with the highest needs and vulnerable population. It will also support initiatives to help communities strengthen their capacity to oversee and manage their on-reserve housing, and thus improve the sustainability and quality of their housing stock over the longer term. Of this amount, $137.7 million over two years will primarily support the renovation and retrofit of existing housing on-reserve.

To address urgent housing needs in Northern and Inuit communities, the 2016 federal budget includes up to $177.7 million over two years, starting in 2016-2017, to be delivered by provinces and territories through the Investment in Affordable Housing. Specifically, over two years, $8 million is being provided to Yukon, $12 million to the Northwest Territories, and $76.7 million to Nunavut. Investments are also earmarked for three Inuit regions: Nunavik ($50 million over two years), Nunatsiavut ($15 million over two years) and the Inuvialuit Settlement Region ($15 million over two years).

At the provincial and territorial level, British Columbia has continued to demonstrate leadership in tackling women’s housing issues by providing approximately $32.9 million in 2015-16 to support close to 800 spaces in Transition Houses, Safe Houses, and Second Stage Housing for women. The provincial government also continues to invest in a wide range of housing options for Indigenous people and works in partnership with the Aboriginal Housing Management Association (AHMA) to achieve the common goal of self-management, self-reliance, and self-sufficiency in the provision of safe and affordable housing for Indigenous people living off reserve. In 2015-16, the provincial government provided over $30 million to AHMA to administer subsidy payments that keep the housing affordable for Indigenous individuals and families.These programs are supplemented by support provided under BC’s Provincial Domestic Violence Plan, which has invested $1.5 million to support victims of domestic violence in rural and remote communities with limited access to transportation and social housing options. This support might involve, for instance, transporting women, with or without children, to the safety of a transition house over a long distance. In addition, the federal government has recently committed $10.9 million to British Columbia to support the construction and renovation of shelters and transition houses for victims of family violence.

### *Health care*

The Government of Canada, through Health Canada and the Public Health Agency of Canada (PHAC), continues to work to address the problem of violence against Indigenous women and girls by supporting culturally relevant public health promotion and prevention services for First Nations living on reserve and Inuit in Inuit communities, and providing program support to community-based organizations serving Indigenous populations living off-reserve. The Government invests in services that support communities in addressing the root causes of violence, including substance abuse, intergenerational trauma, loss of traditional culture and mental illness. Investments are also funding programs and services to promote healthy pregnancies, healthy births and healthy childhood development.

To support the improved mental health and wellness of First Nations and Inuit individuals and communities, Health Canada is investing $271.3 million in 2016-17 in mental health and suicide prevention programming, substance abuse prevention and treatment programs, and health supports for former students of Indian Residential Schools and their family members. For example, through the National Native Alcohol and Drug Abuse Program and the National Youth Solvent Abuse Program, Health Canada is funding a network of 43 treatment centres as well as drug and alcohol prevention services in the majority of First Nations and Inuit communities across Canada. The goal of these and other mental wellness programs is to provide First Nations and Inuit communities, families, and individuals with culturally relevant mental wellness services and supports that are guided by community priorities and responsive to their needs.

To promote healthy pregnancies, healthy births and healthy childhood development in First Nations and Inuit communities, Health Canada is investing $102.8 million in 2016-17 in community-based, health promotion and disease prevention programs that promote supportive environments and healthy behaviours. Funding from these programs supports community directed and designed programming that addresses local priorities of First Nations and Inuit communities.

Provinces and territories also continue to invest in culturally appropriate health services to achieve better health outcomes for Indigenous Canadians. A notable investment is being made by Ontario over the next three years, totalling nearly $222 million, to ensure Indigenous people have access to culturally appropriate care and improved outcomes, focusing on the north of the province, where there are significant gaps in health services. This investment will be followed by sustained funding of $104.5 million annually to address health inequities and improve access to culturally appropriate health services over the long term.

### *Combatting human trafficking*

Indigenous women continue to be at greater risk of becoming victims of human trafficking than the general Canadian population. Human trafficking for sexual exploitation continues to constitute the majority of trafficking cases faced by law enforcement across Canada, often in large urban centres, and most victims are Canadian women. Human trafficking has been found to occur discreetly behind prostitution fronts, such as escort agencies, massage parlours, and adult entertainment establishments.

Acknowledging the higher risks of human trafficking for Indigenous people, Canada’s *National Action Plan to Combat Human Trafficking* includes objectives to increase awareness among Indigenous people regarding trafficking and to build on the existing body of knowledge regarding the circumstances that lead to their possibly being trafficked. The following initiatives have been undertaken:

* a national awareness campaign in partnership with National Association of Friendship Centres on domestic sex trafficking of Indigenous peoples living on and off reserve and in rural, urban and northern communities, in order to help prevent victimization;
* a Handbook for helping sexually exploited Indigenous women and girls, developed by the Native Women’s Association with funding from Indigenous and Northern Affairs Canada (INAC);
* the RCMP’s “I’m Not for Sale” campaign whereby the Human Trafficking National Coordination Centre (HTNCC) distributed over 31,000 toolkits and 977 posters to Indigenous communities across Canada;
* the publication of Public Safety’s *Local Safety Audit Guide: To Prevent Trafficking in Persons and Related Exploitation*, which was designed to contribute to the development of training materials for law enforcement and police in collaboration with the Department of Justice;
* the development of strategic action plans to prevent human trafficking and other related forms of violence and exploitation in Canada’s urban centres, and to address the factors which make particular groups far more vulnerable to sexual exploitation and/or forced labour than others;
* an introductory on-line course on human trafficking developed in partnership with the Canadian Police Knowledge Network for law enforcement, which addresses legislation, investigative techniques, the effects of trauma on victims, interviewing techniques, how to build trust and obtain cooperation from victims, and successful case studies, as well as a five-day human trafficking investigator’s course in partnership with the Canadian Police College to address these same issues in a more comprehensive fashion;
* an exploratory study on the socio-economic factors related to trafficking of Indigenous women and girls; and
* a Knowledge Exchange Forum on Trafficking in Persons and Sexual Exploitation of Indigenous Peoples carried out by INAC.

In 2015-16, the federal government also funded Project Northern Outreach, undertaken collaboratively between Persons Against the Crime of Trafficking in Humans (PACT) Ottawa and with financial support from Public Safety Canada to harness the expertise of the Grandmother’s Network (GN). The project supported a circle of Indigenous grandmothers to form an action alliance, designed to understand the nature of trafficking in their communities, and prevent human trafficking through action and support. The project focused on diversity and gender, given its target population, and it leveraged the power of grandmothers as leaders and respected elders in their communities to address at-risk Indigenous youth, namely women and girls. PACT-Ottawa provided assistance to the GN by convening 10 respected grandmothers from the areas of Sault Ste. Marie, Thessalon, and Manitoulin Island, Ontario. The group shared information and expertise, gathered resources, created actionable goals, and shared stories of success and failure. The GN objective was to gather information and act to prevent human trafficking.

# 3. Recommendation 12: Immigration detention, asylum-seekers and non-refoulement

*The State party should refrain from detaining irregular migrants for an indefinite period of time and should ensure that detention is used as a measure of last resort, that a reasonable time limit for detention is set, and that non-custodial measures and alternatives to detention are made available to persons in immigration detention. The State party should review the Immigration and Refugee Protection Act in order to provide refugee claimants from “safe countries” with access to an appeal hearing before the Refugee Appeal Division. The State party should ensure that all refugee claimants and irregular migrants have access to essential health-care services, irrespective of their status.*

## 3.1. General framework for immigration detention

Under the *Immigration and Refugee Protection Act* (IRPA), officers of the Canada Border Services Agency (CBSA) have the authority to detain foreign nationals and permanent residents when there are reasonable grounds to believe the person is inadmissible to Canada, and one or more of the grounds for detention exists (most commonly, an individual is a danger to the public or is unlikely to appear for an examination).[[7]](#footnote-7) Officers will only detain an individual where doing so is necessary and proportional in all the circumstances, and they must consider reasonable alternatives to detention when arresting or detaining an individual: for example, reporting requirements, deposits, and guarantees.

CBSA officials must regularly appear before the Immigration Division of the Immigration and Refugee Board (IRB), an impartial and independent administrative tribunal, to demonstrate that continued detention is necessary. During the review, a CBSA officer must present information to justify the continuation of the detention. The detained individual has the opportunity to make submissions and be represented by legal counsel. The IRB member reviews the case and decides if the individual should remain in detention or be released with or without conditions. At these hearings, the IRB member is required to consider any available alternatives to detention. If the person is not released, the Immigration Division must review the case again within 30 days.

There is no formal time limit on immigration detention. However, Canada’s Supreme Court has concluded that this does not constitute “indefinite detention,” because there is a meaningful process for the ongoing and regular review of detention, taking into account the circumstances of each individual case.[[8]](#footnote-8) The Immigration Division always provides reasons for its decisions, and its decisions are subject to judicial review with leave from the Federal Court of Canada. The constitutional safeguards contained in the *Canadian Charter of Rights and Freedoms* (the Charter) allow for a context-specific assessment of whether an individual’s detention has become so prolonged that it is contrary to human rights standards.

Between April 2014 and March 2015, 6,768 individuals were detained by the CBSA. The average length of detention was 24.5 days.[[9]](#footnote-9)

## 3.2. Designated foreign nationals

In 2012, the IRPA was amended to establish a limited exception to the immigration detention regime that applies in the vast majority of cases, and which was explained above. The new provisions affect only a small and exceptional subset of foreign nationals: if the Minister of Public Safety designates an arrival as irregular, certain foreign nationals who entered Canada as part of the group become “designated foreign nationals.” Designated foreign nationals who are 16 years or older at the time of arrival are initially subject to mandatory arrest and detention, in order to give border authorities sufficient time to conduct investigations into the identity and admissibility of those who have arrived.

There are a number of safeguards to ensure that the initial detention of a designated foreign national continues no longer than is necessary. These include: regular detention reviews before the Immigration and Refugee Board; the availability of judicial review at the Federal Court; release from detention at the request of the designated foreign national in exceptional circumstances (with policies to outline what these circumstances could be); and release from detention on the Minister’s own initiative if the reasons for detention no longer exist.

While there have been some designated foreign nationals subject to this detention scheme, most have been released by the Minister on conditions or have been removed. For a small subset, where there have been concerns about criminality, the Minister has sought continued detention, and this has been authorized by the Immigration Division of the IRB at a detention review. There were no individuals detained under the scheme as of May 11, 2016.

## 3.3. Access to the Refugee Appeal Division

The 2012 amendments also established a Refugee Appeal Division (RAD) within the IRB. The RAD provides an opportunity for most failed claimants to appeal a negative decision of the Refugee Protection Division (RPD). All failed claimants can also apply to the Federal Court for judicial review of the IRB’s final decision on their claim.

In its 2015 Concluding Observations, the Committee expressed concern with the rules that governed access to the RAD. At the time of Canada’s 2015 review, individuals who are nationals of Designated Countries of Origin were denied access to the RAD to appeal a rejected refugee claim, and were only allowed judicial review of the decision before the Federal Court.

Designated country of origin claimants now have access to the RAD. In July 2015, the Federal Court of Canada decided that barring access to the RAD to claimants from Designated Countries of Origin was discriminatory (on the basis of national origin), and therefore contrary to the right to equality in section 15 of the Charter.[[10]](#footnote-10) The constitutional remedy granted by the Court afforded claimants from Designated Countries of Origin the right to appeal to the RAD. The Government of Canada fully supports giving Designated Country of Origin claimants access to the RAD, and is complying with the Federal Court’s decision.

## 3.4. Health Care

As of April 1, 2016, the federal government has fully restored the Interim Federal Health Program (IFHP). The primary purpose of this program is to provide limited and temporary coverage of health care benefits to specific groups of people, such as protected persons (including resettled refugees), refugee claimants, rejected refugee claimants and certain persons detained under the IRPA, pending their eligibility for provincial/territorial health-care insurance.

All beneficiaries now receive the full coverage that was available before program reforms took effect in 2012. Full coverage includes basic benefits (parallel to provincial health insurance) and supplemental benefits (parallel to coverage under provincial social insurance). Supplemental benefits include coverage of prescription drugs, limited dental benefits and certain other benefits. In addition, some beneficiaries in Canada are eligible for coverage of the immigration medical examination. All such benefits must be provided in Canada.

As part of its commitment to fully restore the IFHP, the Government of Canada is also extending coverage to specified pre-departure medical services for resettled refugees starting on or before April 1, 2017, to further improve their health outcomes and reduce public health risks.

In addition, the Minister of Immigration, Refugees and Citizenship has discretion to provide full or partial coverage of health care costs to an individual or group of individuals facing exceptional and compelling circumstances.

The IFHP is not intended to cover all migrants in Canada who are not covered by provincial or territorial health insurance plans or programs.

# 4. Recommendation 16: Indigenous lands and titles

*The State party should consult indigenous people to (a) seek their free, prior and informed consent whenever legislation and actions impact on their lands and rights; and (b) resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands with respect to their treaty rights.*

4.1. Introduction

No relationship is more important to the Government of Canada than the one with Indigenous peoples – the First Nations, Métis, and Inuit.[[11]](#footnote-11) Canada is committed to engaging in a renewed, nation-to-nation and Inuit-to-Crown relationship, based on recognition of rights, respect, co-operation, and partnership. Canada will develop a new Federal Reconciliation Framework, in full partnership with First Nations, Métis, and Inuit, as well as the provinces and territories. An improved partnership with provincial, territorial, and municipal governments will be essential in doing so.

Canada is committed to meeting its consultation and accommodation obligations, in accordance with the Canadian Constitution and international human rights law. To ensure that it is doing so, the Government of Canada will review all laws, policies, and operational practices, in full partnership and consultation with Indigenous peoples. For example, Canada will review its environmental assessment legislation to enhance the consultation, engagement, and participatory capacity of Indigenous groups, when it comes to reviewing and monitoring major resource development projects.

To support reconciliation and continue the necessary process of truth telling and healing, the Government of Canada is working to implement the “Calls to Action” of the Truth and Reconciliation Commission on the legacy of Canada’s Indian Residential Schools system.[[12]](#footnote-12) Implementing these recommendations will improve the economic, social and cultural well-being of Canada’s Indigenous peoples. Implementation starts with meeting our international treaty obligations and commitments, and the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). The new Federal Reconciliation Framework will be informed by the Commission’s Calls to Action.

On May 10, 2016, the Minister of Indigenous and Northern Affairs announced at the 15th Meeting of the United Nations Permanent Forum on Indigenous Issues that Canada is now a full supporter of the UNDRIP, without qualifications, and that Canada will adopt and implement the UNDRIP in accordance with the Canadian constitution. Minister Bennett stated that Canada will fully engage with Indigenous peoples, provinces and territories, industry, and other interested parties. This engagement will support the development of an Action Plan to implement the UNDRIP in Canada. The engagement process will begin in fall 2016 and wrap up by early next year.

## 4.2. Canada’s constitutional framework for Aboriginal and treaty rights

Section 35 of Canada’s *Constitution Act, 1982* provides constitutional protection for Aboriginal and treaty rights, including rights arising from modern treaties between the Crown and Indigenous peoples. The Supreme Court of Canada has stated that the fundamental objective of section 35 is the reconciliation of the respective claims and interests, of Indigenous and non-Indigenous peoples, and that negotiation is the best approach to achieve reconciliation. The duty to consult and accommodate Indigenous interests when the Crown intends to adopt a conduct that could affect adversely Aboriginal or treaty claimed or proven rights is an integral aspect of section 35.

The “Honour of the Crown” is a guiding principle that imposes substantial legal obligations and duties on Canada. It requires Canada (including its departments, agencies, and officials) to act with honour, integrity, and fairness in all its dealings with Indigenous peoples. The Honour of the Crown gives rise to different duties in different circumstances, and guides the conduct of the Crown in all processes for achieving reconciliation between the Crown and Indigenous peoples.

While section 35 recognizes and affirms “existing aboriginal and treaty rights”, it leaves undefined the nature, scope, and content of these rights. Canadian courts have provided guidance and a test to demonstrate the existence of an Aboriginal right. However, as section 35 rights are site and group specific, parties rely heavily on judicial guidance to demonstrate their existence.

As this Committee has observed, court cases dealing with Indigenous issues take a long time and prove to be costly, due to the complexity of Canadian law in this area and the interests at stake. When Aboriginal rights issues arise, it is Canada’s view that the best way to address them is through negotiation, collaboration, and dialogue. The remainder of this response explains Canada’s efforts to do so, with a focus on new measures since Canada’s periodic review in July 2015.

## 4.3. Resolving land and resource disputes through treaty negotiations and dispute resolution mechanisms

### *Comprehensive land claim agreements (modern treaties)*

The negotiation of comprehensive land claim agreements, or modern treaties, remains the most comprehensive process to address section 35 Aboriginal rights. Modern treaties establish a mutually agreed-upon and enduring framework for reconciliation and ongoing relationships between Canada and Indigenous people. The main elements include:

* a description of the Indigenous group’s constitutionally protected rights;
* lands and resources, with the Indigenous group being responsible for management of its lands and resources (note that in some instances, this responsibility is outlined within the context of federal or provincial statute ); and,
* self-government, within the parameters of the Canadian constitutional framework, including the Charter.

Benefits of modern treaties include the removal of barriers to economic development, resolution of past grievances, the integration of Indigenous communities with local economies, and the development of relationships with local governments.

The first modern treaty was signed in 1973. Twenty-eight modern treaties and self-government agreements are currently in effect. The most recent is the Tla’amin (Sliammon) Final Agreement, which came into force on April 5, 2016. Overall, these modern treaties have established Indigenous ownership over 600,000 km² of land, capital transfers of over $3.2 billion, and certainty with respect to Aboriginal land rights in approximately 40 per cent of Canada’s land mass. Modern treaties also aim to achieve political recognition, reconciliation and the protection of traditional ways of life. Canada’s North has been a model for modern treaty negotiation and Indigenous governance innovation, with differing models of treaty implementation occurring in each of the territories.

In response to concerns over the length of time these processes take, Canada is currently looking at ways to speed up its own internal mandating and approval processes. Canada agrees that its current processes should be more efficient, and is looking at options to achieve internal efficiencies.

Canada is also currently working to renew the comprehensive claims process, in follow-up to the April 2015 report by the Ministerial Special Representative, Mr. Douglas Eyford, on *Renewing the Federal Comprehensive Land Claims Policy*.[[13]](#footnote-13)

### *Incremental treaty agreements and non-treaty agreements*

Although modern treaties are the most comprehensive arrangements to address section 35 Aboriginal rights, the reconciliation of section 35 rights is not limited to comprehensive modern treaties. Canada has developed two alternative, constructive arrangements.

First, incremental treaty agreements are available for Indigenous groups that are already negotiating a modern treaty. They allow groups to address section 35 rights on an incremental basis in advance of a comprehensive treaty, while also promoting cooperative relationships during treaty negotiations, and providing for implementation of certain elements that have already been negotiated in the main treaty negotiations. These agreements advance the benefits of a treaty to an Indigenous group during the treaty process, which can serve to expedite negotiations.

Second, non-treaty agreements can be negotiated with Indigenous groups that are not negotiating a modern treaty. These agreements are negotiated for the purpose of advancing reconciliation with Indigenous groups, primarily in areas of federal jurisdiction, and can provide certainty and benefits for the Indigenous group for a limited time and over a specific area of land, without affecting the group’s potential constitutionally protected Aboriginal rights. Likewise, provincial governments also contribute to the advancement of relations through bilateral agreements specific to their jurisdiction.

Canada is currently negotiating one incremental treaty agreement and one non-treaty agreement. Canada continues to be interested in jointly negotiating incremental treaty agreements and non-treaty agreements with Indigenous groups.

### *Policies and tools to implement Canada’s treaty obligations*

In July 2015, the Cabinet Directive on the Federal Approach to Modern Treaty Implementation came into effect. It lays out an operational framework for the management of Canada’s modern treaty obligations, and guides federal departments and agencies to fulfill their responsibilities.

The Treaty Obligation Management System (TOMS) is currently being modernized to align with the Cabinet Directive. TOMS is a system that is administered by the federal government. It tracks information on all federal obligations, and tracks the status of progress in implementing these obligations. TOMS currently identifies over 4000 obligations from the modern treaties. TOMS acts as a statistical database of federal obligation fulfillment over the long term, providing an empirical reporting tool that complements the collaborative, more qualitative annual reports. All federal departments are required to review and verify their obligations as set out in TOMS for completeness and accuracy, and will be required to provide updates on the status of their obligations.

### *Specific claims*

The specific claims policy is another aspect of Canada’s efforts to promote more efficient resolution of claims by Indigenous peoples. For the purpose of the policy, a “specific claim” is one made by a First Nation against the federal government regarding the administration of land and other First Nation assets, and to the fulfilment of treaties. The policy provides a voluntary alternative dispute resolution process, encouraging reconciliation via negotiated settlements rather than litigation.

Since 2007, 134 specific claims have been settled through negotiated settlement agreements and over $2.2 billion in compensation have been paid to First Nations as of March 31, 103. There are roughly 351 claims currently in the specific claims process. First Nations and all Canadians can access searchable online reports that track the progress made as individual specific claims move through the process.

In 2008, the Specific Claims Tribunal was established. The Tribunal is an independent adjudicative body with the authority to make binding decisions on the validity of claims and to award monetary compensation up to $150 million per claim. A First Nation may bring a claim to the Tribunal where the claim has not been accepted for negotiation in the specific claims process, or a negotiated settlement has not been concluded within three years of the claim having been accepted for negotiation. The Tribunal became operational in 2011 and since then has rendered ten decisions with respect to the validity of claims. As of March 31, 2016, there were 70 claims at the Tribunal.

A review of the Tribunal’s mandate, structure and effectiveness began in 2014. During the winter and early spring of 2015, First Nations and other interested parties made representations to the Ministerial Special Representative, Mr. Benoît Pelletier, who was appointed to oversee and facilitate the review. His report has been submitted and is under review. As required under the law, the Minister of Indigenous and Northern Affairs will submit a report to both Houses of Parliament with respect to her conclusions of the review.

### *Aboriginal rights of the Métis*

In late spring 2015 to January 2016, the Ministerial Special Representative, Mr. Tom Isaac, led an engagement process on Métis rights under section 35 of the *Constitution Act, 1982*. This engagement process was twofold:

1. During this process, he met with the Métis National Council and its governing members, the Alberta Métis Settlements General Council, provincial and territorial governments, and other Indigenous organizations and interested parties to map out a process for dialogue on section 35 Métis rights.
2. Tom Isaac engaged with the Manitoba Métis Federation to explore ways to advance dialogue on reconciliation with the Métis in Manitoba in response to the 2013 *Manitoba Métis Federation et al. v. Canada* decision of the Supreme Court of Canada.[[14]](#footnote-14) In its decision, the Supreme Court of Canada declared that: "the federal Crown failed to implement the land grant provision set out in section 31 of the Manitoba Act, 1870, S.C. 1870, c. 3, in accordance with the honour of the Crown”. The Supreme Court's ruling was declaratory in nature and did not prescribe any specific remedy. However, the court emphasized the need for a meaningful response and lasting reconciliation with the Métis. Thus, Tom Isaac’s role to engage accordingly.[[15]](#footnote-15)

The Government of Canada has also committed to working with the Métis, on a nation-to-nation basis, to advance reconciliation and renew the relationship. The final report summarizing what was heard during the engagement, along with key recommendations from the Ministerial Special Representative about how best to move forward, is expected by June 30, 2016.

### *Provincial and territorial negotiation processes*

Provincial and territorial governments have put in place a number of processes to facilitate the negotiation of Aboriginal and treaty rights.

For example, the British Columbia Treaty Process is a negotiation process established to resolve outstanding land claims and unextinguished Aboriginal rights in that province. British Columbia’s Ministry of Aboriginal Relations and Reconciliation (MARR) leads the province’s participation in treaty negotiations, interim measures, and other agreements with First Nations and the federal government on lands and resources, governance, fiscal relations and capacity-building.

In addition, British Columbia supports multi-sectoral and inter-jurisdictional approaches to build non-treaty agreements with First Nations, including agreements on strategic engagement, reconciliation, and revenue-sharing. These agreements ensure that First Nations receive financial benefits from projects in their traditional territories and enhance certainty regarding land and resource decisions. MARR committed to develop seven new strategic agreements in 2015-2016 to respond to specific First Nations’ interests and support regional economic growth.

In Newfoundland and Labrador, the Labrador and Aboriginal Affairs Office (LAAO) is mandated to negotiate and ensure the implementation of land claims, self-government and other agreements related to Indigenous issues. The LAAO is currently in the process of negotiating the Labrador Innu Land Claim and Self-Government Final Agreement and the Miawpukek First Nation Self-Government Agreement.

Nova Scotia engages in Aboriginal and treaty rights negotiations through the Made-In-Nova Scotia Process. The Process is the forum wherein the Mi’kmaq, the Government of Nova Scotia and the Government of Canada resolve issues related to Mi’kmaq treaty rights, Aboriginal rights, including Aboriginal title, and Mi’kmaq governance. Negotiations are guided by the 2007 Framework Agreement which places emphasis on achieving interim arrangements with respect to access and management opportunities regarding land and natural resources.

## 4.4. The duty to consult

Beginning in 2004 and 2005, the Supreme Court of Canada issued decisions holding that the Crown, whether in the form of the federal, provincial or territorial governments, has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or treaty rights.[[16]](#footnote-16)

### *Federal implementation of the duty to consult*

The Government of Canada takes its duty to consult obligations very seriously. Federal departments and agencies will consult Aboriginal groups if they contemplate activity that might adversely impact potential or established Aboriginal or treaty rights. Canada takes a whole of government approach to consultation. This signifies a broader approach built on positive partnerships and efficient processes, designed to achieve unity of efforts and unity of purpose. There is a greater emphasis on coordination and collaboration, strengthening partnerships and continuing to operationalize consultation and accommodation. Please see the attachment providing an example of Canada’s approach to fulfilling its duty to consult obligations in a recent case (Annex 1: Giant Mine Remediation Project – Communications and Engagement Strategy 2015-2020).

At the federal level, Indigenous and Northern Affairs Canada works with departments and agencies to develop policies, tools and training for officials on how they can fulfill the duty to consult. An important tool is the *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, dated March 2011. Approximately 3550 officials have participated in consultation and accommodation training sessions, from approximately 55 federal departments, provincial and territorial ministries, and agencies and Crown corporations.

The Government of Canada maintains up to date information resources on Aboriginal and treaty rights throughout Canada. The Aboriginal and Treaty Rights Information System (ATRIS) is a publicly accessible, online geographic information system that helps users identify the location of communities and display information pertaining to their Aboriginal or treaty rights (whether potential or established).[[17]](#footnote-17) ATRIS provides access to narrative records and maps that can be used to assist governments, industry and other interested parties in determining their consultation obligations and in carrying out their consultation research. Since 2012, 1940 federal officials have received training on the use of ATRIS, along with 545 members of the public.

As further information on Aboriginal rights in Canada becomes available through consultations with Aboriginal communities, court decisions or other means, ATRIS will be updated to reflect and enhance public access to this data. In 2015-2016, over 1000 records or information blocks within ATRIS were added, amended or updated.

From May to August 2015, the Ministerial Special Representative, Mr. Bryn Gray, led an engagement process with Indigenous communities, provinces and territories, and industry representatives to obtain their views on improving Canada's approach to consultation and accommodation. All input received will be reviewed and used to assist the government-wide effort to renew the relationship between Canada and Indigenous peoples.

### *Consultation protocols*

The Government of Canada negotiates consultation protocols with Aboriginal communities, in order to establish an agreed-upon process to follow when addressing the constitutional duty to consult. By entering into protocols, Canada hopes to strengthen relationships and promote more meaningful consultation processes. Protocols also promote consistency and fairness, assist communities in addressing any capacity challenges they may have in engaging with consultation processes, and build ongoing working relationships with communities.

Negotiations are currently underway across Canada to establish more tripartite consultation processes, between the Aboriginal community, the federal government, and the relevant provincial or territorial government. Canada has concluded consultation protocols with the following groups:

* The Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process[[18]](#footnote-18);
* The Mi'kmaq-Prince Edward Island-Canada Consultation Agreement[[19]](#footnote-19);
* The Mi'gmaq-Quebec-Canada Interim Tripartite Agreement on Mi'gmaq Consultation and Accommodation (Gaspé region)[[20]](#footnote-20);
* Two protocols with the Dene Tha’ First Nation: The Mackenzie Gas Pipeline Consultation Protocol, and the Federal Authorizations Consultation Protocol;
* The Algonquin-Ontario-Canada, Consultation Process Interim Measures Agreement[[21]](#footnote-21); and
* The Canada-Métis Nation of Ontario Consultation Agreement.

### *Memoranda of Understanding*

Bilateral memoranda of understanding (MOU) are negotiated between the federal government and provincial or territorial governments, to enhance communication, improve consultation processes and facilitate the coordination of consultation for projects that involve both levels of government. A MOU has been concluded with Nova Scotia.[[22]](#footnote-22) Negotiations are ongoing in various other jurisdictions across Canada.

### *Provincial and territorial implementation of the duty to consult*

Provincial and territorial governments also have a number of established methods of implementing the duty to consult.

For example, Alberta’s consultation process is guided by the *Government of Alberta’s Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*, as well as the *Government of Alberta’s Policy on Consultation with Métis Settlements on Land and Natural Resource Management, 2015*, and associated guidelines. The Aboriginal Consultation Office was established in 2013 and supports the Government of Alberta in meeting its consultation obligations, including managing the assessment of project impacts on First Nations’ treaty rights and Métis Settlements traditional use and harvesting activities. The Government of Alberta began engaging First Nations on a renewal of the 2013 First Nation Consultation Policy in the summer of 2016. The objective of the renewal is to ensure that the First Nation Consultation Policy aligns with the principles and objectives of the *United Nations* *Declaration on the Rights of Indigenous Peoples*, and better reflects the evolving needs of First Nations, as well as industry and other stakeholders. Alberta is also engaging with the Métis Nation of Alberta Association regarding the development of a non-Settlement Métis Consultation Policy.

The Government of Alberta provides funding to First Nations and Métis Settlements to participate in Alberta’s consultation process through the First Nations Consultation Capacity Investment Program and the Métis Settlements Long-Term Governance and Funding Arrangement Agreement. This funding is to assist First Nations and Métis Settlements’ consultation structures and support participation in Alberta’s consultation initiatives. For 2016-2017, over $7 million in consultation capacity funding has been allotted.

Nova Scotia abides by the Terms of Reference for a Mi’kmaq Nova Scotia Canada Consultation Process, which applies to twelve of the thirteen Mi’kmaq Bands. Core funding is provided by the province to the Assembly of Nova Scotia Mi’kmaq Chiefs for the twelve bands under the Terms of Reference.

In April 2015, Nova Scotia published the *Government of Nova Scotia Policy and Guidelines: Consultation with the Mi’kmaq in Nova Scotia*. This policy provides additional transparency and clarity on Nova Scotia’s approach to consultation.

Manitoba’s Interim Provincial Policy for Crown Consultation with First Nations, Métis Communities and other Aboriginal Communities was adopted in 2009 to ensure that the province (1) keeps informed and understands the interests of First Nations, Métis communities and other Aboriginal communities with respect to a proposed government decision or action; (2) seeks ways to address and accommodate those interests where appropriate through a process of consultation; and (3) advances the process of reconciliation between the Crown and First Nations, Métis communities and other Aboriginal communities. Further, to assist in meeting the Crown’s duty to consult, Manitoba established an Interdepartmental Working Group on Crown-Aboriginal Consultation, consisting of representatives of leading government departments to advise the government on best practices for consultation.

In 2006, the Government of Quebec adopted the *Interim Guide for Consulting Aboriginal Communities*. Implemented in 2008, this document proposes general directives for ministers and organizations to assist in operationalizing Quebec’s constitutional obligation to consult with Indigenous communities. The Secretariat for Aboriginal Affairs has also established a budget, though the Aboriginal Initiatives Fund II, that helps financially support the participation of Indigenous communities in consultations initiated by the Government of Quebec.

In 2015, the Government of Quebec also adopted a document titled *Information for Developers and General Information Regarding Relations with Aboriginal Communities in Natural Resource Development Projects*. The document essentially contains:

* the procedures for the examination and evaluation of environmental impacts of projects in Quebec;
* the obligations, roles and responsibilities of the government and developers with respect to development projects and Indigenous consultation;
* avenues for establishing harmonious and constructive relations between developers and Indigenous communities;
* information on Quebec’s Indigenous communities;
* the encouragement of voluntary disclosure of an agreement’s contents regarding impact and benefits;
* references to obtain government support.

1. CCPR/C/CAN/CO/6 (adopted by the Committee July 20, 2015). [↑](#footnote-ref-1)
2. Government of Canada, *What we Heard* (2016), online: http://www.aadnc-aandc.gc.ca/eng/1448638260896/1448638282066#rep. [↑](#footnote-ref-2)
3. Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety, *Justice Framework to Address Violence against Indigenous Women and Girls*, 21 January 2016, online: http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/publications/fpt-justice-framework-english.pdf: [↑](#footnote-ref-3)
4. Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview*, online: http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf. [↑](#footnote-ref-4)
5. 2016 CHRT 2, online: http://canlii.ca/t/gn2vg. [↑](#footnote-ref-5)
6. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada*, 2016 CHRT 10, online: http://canlii.ca/t/gppjk. [↑](#footnote-ref-6)
7. *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 55, http://canlii.ca/t/52hdn. [↑](#footnote-ref-7)
8. See *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras. 95-128, http://canlii.ca/t/1qljj. [↑](#footnote-ref-8)
9. See online for additional information on immigration detention: http://www.cbsa-asfc.gc.ca/security-securite/detent-eng.html. [↑](#footnote-ref-9)
10. *Y.Z. v. Canada (Citizenship and Immigration)*, 2015 FC 892, http://canlii.ca/t/gkcps. [↑](#footnote-ref-10)
11. In late 2015, the Government of Canada began using, in public communications, the term “Indigenous” instead of “Aboriginal” to officially describe the Indigenous populations in Canada. However, in legal contexts Canada must continue to use the various terms that are included in federal and provincial laws. For example, section 35 of Canada’s *Constitution* *Act, 1982* recognizes and affirms Aboriginal and treaty rights of the “aboriginal peoples of Canada”. That provision contains a specific definition for this term. Therefore, this report will generally use the term “Indigenous”, but it will use the term “Aboriginal” when referring to constitutionally protected rights. [↑](#footnote-ref-11)
12. Truth and Reconciliation Commission of Canada, *Final Report* (2015), online: http://www.trc.ca/websites/trcinstitution/index.php?p=890. [↑](#footnote-ref-12)
13. See online: https://www.aadnc-aandc.gc.ca/eng/1405693409911/1405693617207. [↑](#footnote-ref-13)
14. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12888/index.do. [↑](#footnote-ref-14)
15. https://www.aadnc-aandc.gc.ca/eng/1405693409911/1405693617207. [↑](#footnote-ref-15)
16. *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388. [↑](#footnote-ref-16)
17. ATRIS can be accessed online: https://www.aadnc-aandc.gc.ca/eng/1100100014686/1100100014687. [↑](#footnote-ref-17)
18. See online: https://www.aadnc-aandc.gc.ca/eng/1100100031918/1100100031919. [↑](#footnote-ref-18)
19. See online: https://www.aadnc-aandc.gc.ca/eng/1344522721221/1344522886022. [↑](#footnote-ref-19)
20. See online: https://www.aadnc-aandc.gc.ca/eng/1360079520382/1360079711082. [↑](#footnote-ref-20)
21. See online: https://www.aadnc-aandc.gc.ca/eng/1100100032101/1100100032102. [↑](#footnote-ref-21)
22. See online: http://www.aadnc-aandc.gc.ca/eng/1351710378360/1351711152203. [↑](#footnote-ref-22)