Submission of the Assembly of First Nations to the Committee on the Rights of the Child

61st Session
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United Nations, Geneva

Review of Canada’s 3rd and 4th Periodic Reports
INTRODUCTION

The Assembly of First Nations (AFN) is the national organization for First Nations peoples in Canada. This includes more than 800,000 citizens living in 633 First Nations communities, as well as rural and urban areas. The AFN is an advocacy organization for First Nations and our role is to advance First Nation priorities and objectives as mandated by First Nations and expressed through the Chiefs-in-Assembly. This includes providing an organizing and coordinating role, providing legal and policy analysis, communicating with governments and the general public, facilitating national and regional discussions and facilitating relationship building between the Crown and First Nations.

The Assembly of First Nations (AFN) is submitting information to the Committee on the Rights of the Child, Sixty-first session that calls upon Canada to submit in writing information regarding the well-being of Indigenous children, specifically First Nations children living in Canada.

This document is organized with the following sub-sections:

1) EDUCATION – culturally relevant elementary, secondary and post-secondary
   a) Legacy from residential Schools
   b) Early Childhood learning (AHSOR)
   c) Indigenous Languages (2008 Roadmap on Linguistic Duality)

2) CHILD WELFARE

3) YOUTH JUSTICE
EDUCATION

1. Culturally relevant elementary, secondary and post-secondary education for First Nations students

A Declaration on First Nations Jurisdiction Over Education

We affirm that we are the Indigenous peoples of this land.

We affirm that we have always had jurisdiction over First Nations learning and we maintain the right and the responsibility to establish First Nations learning institutions and to provide learning in First Nations languages.

We affirm that based on the spirit and intent of our “Nation to Nation” relationship with the Crown we have collective inherent and treaty rights to education...


The First Nations Control of First Nations Education: It’s Our Vision, It’s Our Time (FNCFNE), is a policy paper that was endorsed by consensus at the Assembly of First Nations Annual General Assembly in 2010.¹

The Vision Statement for Lifelong Learning states:

First Nations lifelong learning is a process of nurturing First Nations learners in linguistically and culturally-appropriate holistic learning environments that meet the individual and collective needs of First Nations and ensures that all First Nations learners have the opportunity to achieve their personal aspirations within comprehensive lifelong learning systems.²

There is no ambiguity in our Vision Statement nor in the following Policy Objectives:

1 The “First Nations Control of First Nations Education, 2010” education policy paper updated the original “Indian Control of Indian Education, 1972” that was a catalyst for ongoing struggles for Indigenous language, culture, history and Traditional Teachings within the classrooms and on the land.
I. Ensure First Nations lifelong learners have access to an education system with programs and services grounded in First Nations languages, values, traditions and knowledge.

II. Build and sustain First Nation capacity and institutional development so as to deliver a wide spectrum of quality programs and services across the learning continuum.

III. Implement First Nations control of First Nations education.3

It is expressly stated in First Nations Control of First Nations Education that:

All governments in Canada must “fulfill their Constitutional, Treaty and international obligations to First Nations peoples by supporting the design and implementation of First Nations comprehensive learning systems with adequate and sustainable resourcing (p. 20).4

The AFN document further noted:

Recommendations requiring implementation by the federal, provincial and territorial governments of Canada must be developed in consultation and collaboration with First Nations governments, and with their free, prior and informed consent (p. 11).

In 1996, the Report of the Royal Commission on Aboriginal Peoples (RCAP) stated:

For more than 25 years, Aboriginal people have been articulating their goals for Aboriginal education. They want education to prepare them to participate fully in the economic life of their communities and in Canadian society. But this is only part of their vision. Presenters told us that education must develop children and youth as Aboriginal citizens, linguistically and culturally competent to assume the responsibilities of their nations. Youth that emerge from school must be grounded in a strong, positive Aboriginal identity. Consistent with Aboriginal traditions, education must develop the whole child, intellectually, spiritually, emotionally and physically.5

3 Ibid.
4 2006 May Status Report of the Auditor General of Canada - Chapter 5—Management of Programs for First Nations. The Auditor General noted the following: “Finally, the different roles of Indian and Northern Affairs Canada create at least the appearance of a conflict between the Department's fiduciary responsibilities for First Nations and its obligations to act on behalf of the Crown—a conflict that has an impact on the implementation of our recommendations.” We believe that there is more than just an “appearance” of conflict. http://www.oag-bvg.gc.ca/internet/English/parl_oag_200605_05_e_14962.html
For students attending Pre-K to Grade 12 on reserve, access to culturally and linguistically responsive education is less problematic than those attending schools off reserve.

However, the central issue facing all First Nation schools on reserve is the lack of adequate and sustainable funding for language teachers, Elders, curriculum development, and in-service and professional development for teachers and teacher aides – resources that are readily available in French and English-language schools in Canada.

In schools, colleges and universities off reserve, access to culturally and linguistically responsive education for First Nations students is too often restricted to availability – limited access to Indigenous teachers and/or Elders, culturally competent non-Indigenous teachers, curricula, etc.

Mainstream institutions do not exist to specifically focus on the needs of First Nations students and do not commit to developing and delivering programs to address student support services and the unique provisions of Indigenous programs.

There is some progress as provincial curriculum at the primary, secondary and post-secondary levels develop academic subjects that include Indigenous histories, cultures and languages in mainstream education. However, it is still far too slow and inconsistent.

It is also difficult to know which school boards and schools in Canada are providing culturally and linguistically responsive education or to know if there have been any comprehensive evaluations of the implementation of these programs.

A recent tripartite agreement between Canada, the province of Alberta and First Nations in Alberta has produced shocking data. Not only are First Nations schools underfunded by $15 million per year, but over 39% of all eligible students between the ages of 4-21 years old are not attending or are registered in any school in the province.

The Assembly of First Nations has estimated that there may be as many as 45,000 eligible children and youth between the ages of 4-21 years old that are not attending

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6 The Government of Canada has maintained a 2% funding cap on many areas of funding for First Nations, including education since 1996.


8 The Post Secondary Student Support Program, as a result of the 2% cap on PSE funding, has denied access to over 13,000 students in the years 2001-2008.

9 Ibid.
school in Canada.\textsuperscript{10} There are a myriad of reasons for the drop-out, push-out or disconnect with education, one of which may be the absence of seeing their culture, histories and languages reflected in the curriculum or being taught by teachers and professors who lack cultural competency.

The concerns of First Nations students to be educated in their own languages, histories and cultures are not newly discovered revelations. Prior reports and studies\textsuperscript{11}, including the 1971 Watson Report, recommended to the House of Commons:

\textbf{Culture:}

2. That all curriculums within the federal program be revised to include:
   a. Substantially more Indian history including Indian contributions to the economy, science, medicine, agriculture, exploration, etc.,
   b. Special courses in Indian culture, music, art, handicrafts, etc., and that pressure be brought upon the respective provincial systems to inaugurate similar reforms wherever Indian children are being taught (p. 27:5)

\textbf{Language:}

3. That the language of instruction at the pre-school level and up to the first or second year of primary school should be in the language of the local Indian or Eskimo community with secondary and tertiary languages English and/or French being introduced gradually through the pre-school and primary period and that courses linked to the local Indian or Eskimo culture continue to be taught in the local language throughout the primary level of school.

4. That decisions regarding the initial languages of instruction and the timing of introduction of secondary and tertiary languages should only be made after consultation with, and clear approval from a majority of parents in the communities concerned (p. 27:6).\textsuperscript{12}


\textsuperscript{11} RCAP, 1996 – Although not all research focused on education, Footnote # 4 states: A search revealed close to 900 commissions and task forces sponsored by federal, provincial and territorial governments or Aboriginal and other organizations over the past 25 years (from about 1971 to 1996). More than 200 of these reports were reviewed and analyzed in Public Policy and Aboriginal Peoples, 1965-1992, a four-volume study conducted for RCAP by the Centre for Policy and Program Assessment, School of Public Administration, Carleton University (Ottawa: Supply and Services, 1993-1996).

While provincial and territorial Ministries of Education, and the Council of Ministers of Education Canada are doing more to ensure that Indigenous histories, cultures and languages are included in some areas of curricula, more effort is required to track its implementation – what school boards and individual schools are doing to provide Indigenous histories, cultures, languages and contributions in all core subject areas.

The Indian Studies Support Program, provides funding for Indigenous Institutions of Higher Learning (IIHLs). They provide a critical bridge or transition from secondary to post-secondary education. Most offer basic skills training, literacy, adult education, upgrading, as well as certificate, diploma, degree programs (partnered with mainstream institutions), culture and language programs and community workforce training. IIHL have proven high completion rates and provide safe, supportive and culturally responsive programs.

In addition, IIHLs have existed since the 1970s and continue to build and expand their capacity and demonstrate success in First Nations education. However, IIHLs are not recognized and supported in a similar manner to mainstream colleges and universities. This is contrary to the UN Declaration on the Rights of Indigenous Peoples, art. 14.

Again, the key challenge facing IIHLs are financial. For IIHLs to develop to their full potential and greater impact, they require:

- Legislative recognition as institutions mandated to address the education and training needs of First Nations peoples
- Multi-year sustainable and adequate funding based on the costs to deliver post-secondary education in Canada versus annual projects – for operations and management
- Per student funding allocations – as do mainstream institutions
- Capital grants – to provide modern or upgraded facilities, such as libraries, science and computer laboratories
- Grants for curriculum design and development
- Grants for student support services i.e., academic and personal counselling, prior learning and assessment recognition, culturally appropriate assessment tools, etc.
- Grants for evaluation and development – for planning and growth
- Increased funding for student support services – including Elder support
- Research grants

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13 Aboriginal Affairs and Northern Development, formerly known as Indian Affairs and Northern Development Canada funds the Post-Secondary Program.
While Indigenous learners and teachers know instinctively that our heritage languages, cultures and histories are the “heart” of First Nations learning, there is a disconnect with Aboriginal Affairs and Northern Affairs Canada’s (AANDC) program guidelines and Indigenous holistic visions of learning.

AANDC’s policy objectives for Elementary and Secondary education states:

The primary objective of elementary/secondary education programming is to provide eligible students living on reserve with education programs comparable to those that are required in provincial schools by the statutes, regulations or policies of the province in which the reserve is located.

AANDC’s policy objectives for the Post-Secondary Student Support Program states:

The primary objective of AANDC’s PSE programming is to help First Nation, Inuit and Innu learners achieve levels of education comparable to other Canadians by providing eligible students with access to education and skill development opportunities at the post-secondary level.

First Nations peoples have not given their free, prior and informed consent in the development and introduction of these educational policies administered by AANDC.

The continual reference to “comparable to other Canadians” or that we must adhere to provincial norms and standards as a condition to receiving education funding is contrary to the amassed research, and Indigenous peoples’ positions that we have never relinquished our human rights and duties to educate our children.

The AFN noted in their recent paper,\(^\text{14}\) that:

“First Nations, the Auditor General and even a series of internal AANDC evaluations have highlighted the many difficulties with this overall program objective. The biggest concern, however, has to be the inherent disconnect between AANDC’s program objective and the overall vision for education put forward by First Nations.”

It must be stressed that Indigenous peoples in Canada are not just another ethnic or immigrant minority but the Original inhabitants of the Americas. This message and our position that Indigenous peoples have treaty and inherent rights recognized and affirmed in S. 35 of the Constitution Act, 1982, and rights as stated in the United Nations

Declaration on the Rights of Indigenous Peoples, the Convention on the Rights of the Child, and other international instruments, must be disseminated to all learning institutions and to all levels of government.

The Canadian Human Rights Act was amended in 2008 to include matters and decisions made under the Indian Act, which had previously been excluded. The revised legislation applied immediately to the federal government, while First Nations governments were given three years to prepare for the transition.

One of the subsequent complaints against the federal government comes from the Mississaugas of New Credit First Nation15 in southern Ontario, where two young boys with pervasive development disorder require intensive special education services, including equipment and supervision in their community school. The federal government provides a certain amount of funding every year for special education services on reserve; however, it is a proposal driven process with a predetermined fixed amount available to First Nations schools, thus there is no room and no flexibility for unique cases.

In the case of the Mississaugas of New Credit, if the boys lived across the road in Provincial jurisdiction, costs for low incidence special needs would automatically be subsumed by the Ontario Ministry of Education under inclusive education legislation.

The community has filed a complaint with the Canadian Human Rights Commission about the lack of comparable human rights guarantees for children with special needs on reserve. The First Nation has recently learned that the case has been approved for a tribunal hearing. A positive outcome of the tribunal will have far reaching implications for inclusive education and the rights of all children on reserve to an appropriate education.

Inherent in the discussion on "comparability," adhering to provincial standards and policies and participation in Canada’s structures and systems, is the danger of forfeiting inherent rights to self-determination and extinguishing First Nations’ identities and ties to the land.

First Nations, therefore, discuss comparability with great caution and with consideration to international covenants in order to maintain the historical relationship with the Crown; and in order to protect inherent, aboriginal, and treaty rights for as long as the sun shines, the rivers flow and grass grows.

Outside of elementary and secondary education, the broader rights of First Nations children and youth, with disabilities on reserve viewed and considered within the above

15 http://www.firstnationsspecialeducation.ca/; background information specific to the ongoing Human Rights Complaint.
context, also continue to be denied within unilaterally developed unsatisfactory federal government policies, or neglected outright through non-existent policies.

With no specific legislation or mechanisms for accessibility and services on reserve, First Nations families are forced to advocate for accessibility services through child protection policies. First Nations disability advocates continue to say that families living with disability on reserve should not have to go to Child and Family Services (CFS) agencies to access these disability related services.

Non First Nations parents do not have to go to CFS as there are many non-mandated as well as mandated disability related services that they can access. The lack of both non-mandated and mandated options allows government to keep First Nations disability policy and programming within a child protection context, which many feel continues to marginalize First Nations children and families living with disability.

### a) Legacy of Indian Residential Schools

“It is unlikely that any tribe or tribes would give trouble of a serious nature to the Government whose members had children completely under Government control.”

- Indian Affairs school inspector L.A. Macrae, 1886

It has been mentioned that the greatest feat of Indigenous peoples is that we have survived. Our story has been eloquently recorded by the Truth and Reconciliation Commission of Canada; the recently published interim report entitled “They Came for the Children: Canada, Aboriginal Peoples and Residential Schools” (2012) explains the story of loss:

> Residential schools disrupted families and communities. They prevented elders from teaching children long-valued cultural and spiritual traditions and practices. They helped kill languages. These were not side effects of a well-intentioned system: the purpose of the residential school system was to separate children from the influences of their families and their communities, so as to destroy their culture. The impact has been devastating.

The Commission has concluded that:

1) Residential schools constituted an assault on Aboriginal children.

2) Residential schools constituted an assault on Aboriginal families.
3) Residential schools constituted an assault on Aboriginal culture.

4) Residential schools constituted an assault on self-governing and self-sustaining Aboriginal nations.

5) The impacts of the residential school system were immediate, and have been ongoing since the earliest years of the schools.

6) Canadians have been denied a full and proper education as to the nature of Aboriginal societies, and the history of the relationship between Aboriginal and non-Aboriginal peoples (p. 85).

We believe that the work of the Truth and Reconciliation Commission will change the way that the youngest and oldest Canadians are taught about the history of Canada. This greatly depends on all educators, all learning institutions, and all levels of government to acknowledge the profound legacy of residential schools, racism and colonization.

The First Nations of Canada as represented through the AFN can assert with certainty, that:

- We affirm our right to self-determination, which impacts on all fundamental human rights as they are universal, indivisible, interconnected and interdependent.

- Our inherent and Treaty rights are affirmed in the Constitution Act, 1982 Canada.

- Canada and all levels of government, including Ministries of Education must take effective measures to ensure that these rights are protected and respected – to promote understanding, tolerance and friendship among all peoples.

- Learning institutions must ensure that Indigenous peoples are actively engaged in any/all development of curricula that deals with Indigenous peoples and that they have free, prior and informed consent prior to any final curricula being used.

- We agree with article 12, General Comment No. 1 (2001), of Article 29 (1): The Aims of Education that states:

   *Article 29 (1) insists upon a holistic approach to education which ensures that educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional*
aspects of education, the intellectual, social and practical dimensions, and the childhood and lifelong aspects. The overall objective of education is to maximize the child’s ability and opportunity to participate fully and responsibly in a free society. Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities.\footnote{16}

- We agree with the UNICEF Innocenti Report (2009) that states their concerns that “the rights of Aboriginal children, as defined by the \textit{Convention on the Rights of the Child}, have yet to be articulated in any legislation related to Aboriginal peoples and, as numerous references throughout this case study demonstrate, the federal government has failed to fully execute its fiduciary responsibility to provide them with adequate education, the best possible health care and non-discriminatory child welfare services.”\footnote{17}

- The UNICEF Innocenti Report also notes the recommendation from the Canadian Senate Standing Committee on Human Rights to have a designated commissioner for Aboriginal children attached to the office of a federal children’s commissioner, which has been called for by witnesses to the Senate Standing Committee on Human Rights, and which would go a long way towards remedying this situation.\footnote{18}

- We agree with the First Nations Regional Health Survey (RHS), Preliminary Results\footnote{19} that find family members are the primary source of cultural understanding for First Nations children.

- The RHS report notes the impressive increase of the role that school teachers play in assisting children to understand culture; the 2002/03 RHS reported that 30.5\% of school teachers as a source of support, and the 2008/10 RHS

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\footnote{19}{19} First Nations Regional Health Survey. RHS Phase 2 (2008/10) Preliminary Results, p. 91. \url{www.fnigc.ca}
Preliminary Results notes 41.9% of school teachers as assisting children to understand culture.\textsuperscript{20}

- We believe that this underscores a requirement that Indigenous teachers teach Indigenous children their histories, cultures and languages.

**AFN CALL FOR ACTION ON EDUCATION**

The Government of Canada has stated their intention to introduce a First Nations Education Act. We assert that this must be accomplished with the full and active participation of all First Nations peoples and with their free, prior and informed consent at every level of development and prior to implementation.

Therefore, we are in agreement with the recommendations for implementation and interpretation of the UN Declaration on the Rights of Indigenous peoples that “Teachers, professors and other educators can include information on the UN Declaration in their classes to help educate all Canadians on the UN Declaration and its significance to Canada.”\textsuperscript{21}

We agree with the Governance Framework for Children, as articulated by UNICEF\textsuperscript{22} in their following statement:

There are specific processes for governing in the best interests of children, described by the UN Committee on the Rights of the Child in its guidance for governments in General Comment No. 2\textsuperscript{23}, General Comment No. 5\textsuperscript{24}. These governance processes ensure that children and their rights are explicitly considered in government decisions and actions...[we include General Comment No. 11.]\textsuperscript{25}

The Assembly of First Nations adds to the UNICEF Governance Framework for children to include:

\[\text{___________________________}\]

\textsuperscript{20} Ibid.
\textsuperscript{21} Indigenous Bar Association and the University of Manitoba Faculty of Law. (2011). *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook*, p. 28.
1. **Law reform** – ensure all legislation, at all levels of government are fully compatible with the Convention, Optional Protocols, and **we add** that it is guided by the UN *Declaration on the Rights of Indigenous Peoples*.

2. **Child rights impact assessment** – **we agree** that all policy development processes provide a systematic process to assess the potential impacts of decisions on children and their rights and promote policy coherence.

3. **Independent advocate for children** – **we add** that this position must be held by an Indigenous person who will advise, monitor children’s rights and well-being, consult children and investigate and help resolve gaps in legal protection and service provision.

4. **Child-friendly budget** – **we agree** that documentation and analysis of funding is critical, including analyzing administration and impact of fiscal measures intended for *Indigenous children* – to ensure they are protected from adverse economic policies and budget decisions.

5. **Coordination mechanism or unit** – **we agree** that a permanent structure in governments is urgently required to “promote coordination, consistency, monitoring and evaluation of activities across all sectors and levels of government, ensuring policy and services for children are equitable and that jurisdictional gaps or disputes are resolved.” This is particularly true of on-going funding issues in jurisdictional disputes for Indigenous children, in spite of the House of Commons passing two motions: one to support *Jordan’s Principle*, and a second Private Member’s Motion to adopt *Shannen’s Dream* of “Safe and comfy schools.”

6. **National plan or strategy for children** – **we agree** that an Indigenous-set national agenda by Indigenous peoples for Indigenous children that would provide for coordinated actions, set targets and timelines and allocates resources and responsibilities toward optimal provisions and protection of all Convention and UN *Declaration* rights, with regular progress reports submitted by an Indigenous organization tasked with this oversight.

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7. **Data collection and monitoring - we agree** that sufficient data on children across the comprehensive spectrum of children’s rights and extending over the whole period of childhood are systematically collected and used to improve the situation of all children, **we add comment with General Comment No. 11 (2009), art. 26** that states the importance of disaggregated data:

Among the positive measures required to be undertaken by States parties is disaggregated data collection and the development of indicators for the purposes of identifying existing and potential areas of discrimination of indigenous children. The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes. (6).

The **AFN adds** that a National Indigenous Children’s Advocate oversee Indigenous-specific data collection and monitoring, and in keeping with the First Nations Principles of Ownership, Control, Access and Possession (OCAP).28

The **AFN adds** that the First Nations Regional Education, Employment and Early Childhood Education Survey (FNREES) on-reserve and in northern First Nations communities will be conducted in the fall of 2012. This survey could benefit from a rights based approach to data collection and indicators to identify existing and potential areas of discrimination of indigenous children.

8. **Awareness, education and training - we agree** that raising awareness and the implementation of the Convention by training policymakers, professionals working with or for children, and educating children about their rights as part of the school curricula, **we add** that Indigenous communities that include families, extended families, and in particular, leadership, should have opportunities for this training.

9. **Public participation – we agree and add** that involvement of civil society be fully engaged in awareness, education and training in the Convention and the UN Declaration on the Rights of Indigenous peoples.

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28 First Nations Information Governance Centre. *First Nations Principles of OCAP.* The FNIGC website notes: The right of First Nations communities to own, control, access, and possess information about their peoples is fundamentally tied to self-determination and to the preservation and development of their culture. OCAP™ allows a community to make decisions regarding why, how and by whom information is collected, used or shared www.fnigc.ca
We also support, in principle, the training and implementation of “Monitoring Children’s Rights: A Toolkit for Community-Based Organization,” Indigenous peoples could collect and gather the needed information at the local level to empower communities to mobilize and effect change for children. A review of the Toolkit would be necessary to ensure compliance with the UN Declaration on the Rights of Indigenous Peoples.

The AFN, in partnership with the Government of Manitoba and First Nations educators, will present “It’s Our Time” First Nations Education Toolkit to select schools in September 2012. The Toolkit content will include national and regional components to advocate and raise awareness through teaching and learning from a First Nations perspective. It is hoped that Manitoba will be the first of many provinces to partner on the Toolkit.

The Government of Canada has stated its intentions to improve educational outcomes for First Nations children from Kindergarten to Grade 12 by introducing legislation by September 2014. This must be done with the free, prior and informed consent of First Nations peoples. Legislation must also be inclusive of the rights in the UN Declaration on the Rights of Indigenous Peoples, the Convention on the Rights of the Child and other international instruments.

The Government of Canada must address funding disparities (including eliminating an arbitrary 2% cap on funding that has been in place for over a decade) which negatively impact education, health and all areas of well-being. A fair and equitable funding formula must be immediately implemented for Funding Year 2012-2013 to provide children living on reserve with equity of opportunities that all children deserve.

b) Early Learning - Aboriginal Head Start Program

At opposite ends of the learning continuum, the two most successful education programs for First Nation peoples in Canada are the Post-Secondary Student Support Program (PSSSP) funded through AANDC (previously known as Indian and Northern Affairs Canada) and the Aboriginal Head Start Program (AHSOR), funded primarily through Health Canada.

Initially, the Government of Canada established Aboriginal Head Start for First Nations, Inuit and Métis children living in urban centres and large northern communities in 1995. In 1998, the AHSOR was expanded to include First Nations children living on reserve. AHSOR provides enhanced child development and school readiness with a focused approach that includes six program components:

1. Culture and Language
2. Education
3. Health
4. Nutrition
5. Social Support
6. Parental Involvement

In 2011, the Health Canada website stated that the Government of Canada provided $59 million annually to support over 9,000 children in over 300 Aboriginal Head Start programs in First Nations communities on reserve. The goal is to provide funding for a focused approach with six program components that are integrated, viable and sustainable. Approximately 9% of First Nations, Inuit and Métis children are under the age of 5, compared to 5% in the non-Indigenous population.

The first evaluation of Aboriginal Head Start on Reserve was completed in 2003; at the time of the evaluation, the AHSOR program was delivered in about 275 First Nation communities. The primary recommendation from this 2003 evaluation was for the program to be made available to all children in all communities. In 2009, Health Canada and its First Nations and Inuit Health Branch (FNIHB) funded AHSOR in 465 (78%) First Nation communities, a commendable increase in accessibility and availability to the program, but still not meeting the need in all First Nations communities.

To be more strategic, Health Canada conducted a Cluster Evaluation\textsuperscript{31,32} of Children and Youth programs in 2009 (Funding Years 2005-06 to 2007-08). Programs included:

1. Aboriginal Head Start On-Reserve (AHSOR);
2. Canada Prenatal Nutrition Program (CPNP);
3. Fetal Alcohol Spectrum Disorder (FASD); and

At an overall level, the evaluation concluded that these programs address those identified community health needs of young First Nations children and their families. Key health issues requiring additional focus included:

- the promotion of First Nations languages,
- support for maternal mental wellness and,
- services for children with special needs and their families.

The Cluster Evaluation identified \textbf{gaps due to insufficient funding} to provide all four programs in all communities (iv). However, in the Planned and Actual Expenditures for AHSOR for Funding Year 2008/09, the Planned Expenditures was $59.02 million, and reported Actual Expenditures was $50.58 million. Lesser amounts for Actual versus Planned Expenditures occur repeatedly from 2005/06 to 2008/09.

Perhaps this explains the gap contributed to insufficient funding, where programs have provided less than that allocated for program expenditures or funds are allocated elsewhere.\textsuperscript{33}

The AHSOR program focuses specifically on child nutrition, use of First Nations languages, child development factors, and helping to prepare children for school. Disparities between the performance of Indigenous children and non-Indigenous children on many measures of well-being continue to be troubling.

The Cluster Evaluation notes that “…while the CY programs do not work directly with


\textsuperscript{32} FNIHB’s CY Evaluation Framework (2008) states that the scope of the cluster evaluation is: (i) to capture commonalities among programs; and, (ii) to enable reporting of high level results. The Framework also states that this evaluation is not intended to evaluate or measure the results of the four individual programs in the CY cluster, but rather to examine the contribution of the services and supports as a group (p.2).

\textsuperscript{33} Reduced “Actual versus Planned Expenditures” occur in all 4 Children and Youth Programs for the same funding years. Cluster Evaluation, Table 3, p. 11.
school age children, all programs contribute to improved school readiness and performance.” It stated that “previous reports have noted the reduced incidence of children repeating grades associated with participants in AHSOR.”

Health Canada has made advances in addressing First Nation children’s needs; however, when they changed their support of Head Start Programs to expanding support through their cluster of programs, there is less emphasis on ensuring support for quality educational programming through licensed Early Childhood Programs.

We acknowledge that AANDC has provided support to increase child care spaces in Alberta (800 spaces), Ontario (3000) spaces, and support for 15 Aboriginal Head Start Programs in New Brunswick. However, this creates inequity of treatment through support of First Nations in only three provinces.

Human Resources and Social Development Canada (HRSDC) also funds approximately 8500 licensed child care spaces through its labour market agreements with First Nations. Our research tells us that 76% of First Nations children aged 0 to 6 years in Canada, do not have access to licensed child care centres. Unfortunately, HRSDC has no strategy to assist First Nations with capital and licensing requirements to support licensed child care programs.

The AFN can agree with certainty that:

- The AHSOR program is one of the two most highly successful educational investment programs; the Post-Secondary Program being the other.

- AHSOR program has contributed to increased Indigenous language revitalization as reported by the First Nations Regional Longitudinal Health Survey (RHS). RHS 2002/03 reported that 19.3% of children age 3-11 years old could speak one or more First Nations languages; RHS Phase 2 – 2008/10 Preliminary Results note this same age group increased to 22.4% - a modest but critical growth of 3.1%.

34 Cited from “First Nations Regional Longitudinal Health Survey (RHS) 2002/03. Results for Adults, Youth and Children Living in First Nations Communities,” 2005.
35 First Nations Regional Health Survey. RHS Phase 2 (2008/10) Preliminary Results, p. 90. www.fnigc.ca
• While the government of Canada has made excellent strides by increasing the accessibility and availability of the program on reserve, there are too many children still waiting.  

• We recognize that once States ratify the Convention on the Rights of the Child, they are obliged to give priority consideration to children and act in the children’s best interests in all decisions, as stated in article 3, Convention on the Rights of the Child.

• We agree with GENERAL COMMENT No. 7 (2005), Implementing child rights in early childhood, Article 13 that states in part:
  …The principle of best interest appears repeatedly within the Convention (including in articles 9, 18, 20 and 21, which are the most relevant to early childhood). The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children’s rights: [(a) including best interests of individual children…., and (b) best interests of young children as a group or constituency…]  

• We agree with article 4, Convention on the Rights of the Child, that:

  States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

• We note that Canada responded to the UN Committee on the Convention on the Rights of the Child, stating:

  “It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfillment of its responsibilities under article 4 of the Convention must take into account

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36 Prairie Women’s Health Centre of Excellence and the British Columbia Centre of Excellence for Women’s Health. (2009). Aboriginal Maternal and Infant Health in Canada: Review of On-Reserve Programming. Notes that “For purposes of assessment, the 2006 Census indicated that 40,000 Aboriginal children aged 0 to 6 lived on reserve that same year. With about 9,100 children being served by AHSOR at that time, that would indicate a shortfall in service coverage of just under 31,000 children, or 77% in 2006, p. 14.

the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language.  

• We affirm the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child, as noted in the United Nations Declaration on the Rights of Indigenous peoples.

• We agree with the following statements regarding States compliance with the recognition and implementation of the Declaration:  

    The UN Declaration was adopted as an Annex to a General Assembly resolution. Under international and domestic law, the Declaration has diverse legal effects.

    The International Law Association underscores that the Declaration is much more than a simple General Assembly resolution and deserves "utmost respect":

    In 1962, the Office of Legal Affairs of the United Nations, upon request by the Commission on Human Rights, clarified that “in United Nations practice, a ‘declaration’ is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected". UNDRIP is such a declaration deserving of utmost respect.


42 Ibid. International Law Association, "Rights of Indigenous Peoples", Interim Report, The Hague Conference (2010) at 5. ILA explains: "This is confirmed by the words used in the first preambular paragraph of the Declaration,
AFN CALL FOR ACTION – RECOMMENDATIONS ON EARLY LEARNING

1. To call upon the Government of Canada to provide early childhood learning to all First Nations children living on reserve, and to provide adequate, sustainable and predictable funding.

2. To call upon the Government of Canada to provide adequate and sustainable funding for capital infrastructure costs.

3. To call upon the Government of Canada to provide targeted funding to ensure a current and future supply of qualified early childhood educators and their ongoing professional learning to implement these programs due to insufficient funding in the Post-Secondary Student Support Program.

4. To implement a Governance Framework for Children, as noted by UNICEF, and the UN Committee on the Rights of the Child in General Comment No. 2, General Comment No. 5, guided by the UN Declaration on the Rights of Indigenous Peoples and other international instruments related to Indigenous peoples.

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according to which, in adopting it, the General Assembly was “[g]uided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter”; this text clearly implies that respect of the UNDRIP represents an essential prerequisite in order for States to comply with some of the obligations provided for by the UN Charter.” [emphasis added]
c) Indigenous Languages (Canada’s 2008 Roadmap to Linguistic Duality)

Aboriginal languages are irreplaceable cultural resources that require protection and support. Literacy in aboriginal languages and in one or both official languages are of equal value and importance.

Commitment and partnership at all levels of government combined with community leadership are essential to the achievement of literacy in aboriginal languages and official languages.


In 1990, the House of Commons Standing Committee on Aboriginal Affairs recommended:

Recommendation 1: The Government of Canada, together with provincial and territorial governments, should support mother tongue literacy, and impress upon the Council of Ministers of Education the necessity and advantage of mother tongue literacy among all aboriginal peoples, whether school age or adults; and,

Recommendation 2: It is recommended that an institution or foundation be established with the goal of promoting the survival, development and use of aboriginal languages. All possible sources of support and activity should be encouraged (iv).43

Sadly, the message from the Right Honourable Prime Minister Stephen Harper on the Road Map for Linguistic Duality states that:

Our federation was born of a desire by English – and French-speaking Canadians to share a common future, and it was built on respect for the language and culture of all Canadians. Linguistic duality is a cornerstone

43 The House of Commons Standing Committee on Aboriginal Affairs (1990) reported on a total of seventeen (17) recommendations, and called upon the Government of Canada, Provincial/Territorial Governments, Council of Ministers of Education (CMEC) that “there should be no delay in mounting a fullscale effort to improve the living condition of aboriginal people…” (iii).
of our national identity, and it is a source of immeasurable economic, social, and political benefits for all Canadians (4).

The Roadmap refers to the Government of Canada’s nationwide consultation facilitated by Mr. Bernard Lord that captured the viewpoints of Canada’s on linguistic duality and official languages. The Anglophone and Francophone minority communities’ participants support for linguistic duality was reported in the Roadmap:

They also spoke about their lives: the importance of working in their own languages; the importance of seeing that their language is taught to their children and grandchildren; the importance of having access to services in their language, when and where they need them; and the central role of arts and culture in the building of their identity (8).

The Roadmap for Canada’s Linguistic Duality 2008-2013: Acting for the Future, states that an unprecedented $1.1 billion investment “presents new, targeted measures that will have a ripple effect, promoting an approach that contributes to a better understanding among English-and French-speaking Canadians, and to their mutual enrichment” (7).

Annex B provides a detailed financial commitment of the 2008-2013 Roadmap by federal department and agency, Canadian Heritage being the largest department with $611.0M to support education in the language of the minority ($280.0M); support for second-language education ($190.0M); summer language bursaries ($40.0M); cultural development fund ($14.0M), among other initiatives.

As a direct consequence to the Roadmap for Canada’s Linguistic Duality 2008-2013: Acting for the Future, the Government of Canada has explicitly noted in their Reports on Plans and Priorities to Treasury Board and Parliament (2010-11 to 2014-2015):

- that Indian Affairs and Northern Development (INAC) Program Activity for First Nations and Inuit education is aligned to Government of Canada Strategic Outcomes as - “A diverse society that promotes linguistic duality and social inclusion” reflected as a performance indicator for Community Well-Being Index (CWB) for First Nations and Inuit.
- Indigenous languages and cultures are omitted from the national vernacular.

Note: Until the establishing legislation is amended, the legal name of the department for the purposes of Appropriation Acts remains Indian Affairs and Northern Development, while in practice and communications materials it has been renamed Aboriginal Affairs and Northern Development Canada. 2012-2013 Report on Plans and Priorities: http://www.tbs-sct.gc.ca/rpp/2012-2013/inst/ian/ian01-eng.asp#s1.1
AFN RESPONSE to 2008 Roadmap for Linguistic Duality:

Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country [Canada].\textsuperscript{45}

The Apology to Indian Residential School Survivors was intended to move the nation toward healing, reconciliation and resolution; meant to forge "a new relationship based on the knowledge of our shared history, a respect for each other …with a renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us.\textsuperscript{46} Yet clearly far more is needed.

The AFN can assert with certainty that:

- The notion of linguistic duality, as stated in the \textit{Roadmap for Canada’s Linguistic Duality 2008-2013: Acting for the Future}, as the “cornerstone of our national identity” is and has been \textbf{exclusionary, assimilative and the causal factor in the destruction} of numerous Indigenous languages, cultures and histories in Canada since colonialism.
- First Nations in Canada have not given their \textit{free, prior or informed consent} to have First Nations \textbf{educational outcomes} aligned with the Government of Canada’s promotion of linguistic duality (English & French) through their Department of Indian and Northern Affairs Canada.
- Canada, through its Canadian Heritage Department, has failed to implement a significant number of recommendations stemming from the government-sponsored Task Force Study, or to acknowledge or support the Policy Objectives and Goals of the National First Nations Language Strategy, as approved by AFN Resolution No. 12/2007.
- At no time have Indigenous peoples \textit{required or beseeched domination} through education that promotes linguistic duality to the exclusion of the right of Indigenous children to be educated in their own languages and cultures, as articulated in the \textit{Convention on the Rights of the Child}, Article 30:
  - In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members

\textsuperscript{46} Ibid.
of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Further, the Declaration on the Rights of Indigenous Peoples, is the most comprehensive human rights instrument – encompassing economic, social, cultural, linguistic, spiritual, and environmental rights.

We assert that our Human Rights are relative rather than absolute – meaning that states cannot deny others that same right, in this case – linguistic rights.

A STATE OF EMERGENCY FOR FIRST NATIONS LANGUAGES IN CANADA

“Canada’s Aboriginal languages are among the most endangered in the world.”


1. There are a total of 11 language families, with more than 65 distinct dialects within those language families in Canada.

2. Statistics Canada reports on: “Aboriginal People who identify a Mother Tongue language.” These statistics report on larger Aboriginal language groups in Canada, and reflect an uncertain future for First Nation languages overall.

3. In 1996, the total number of Aboriginal people in the Aboriginal Peoples Survey conducted by Statistics Canada who identified by Mother Tongue was 23%.

4. In 2001, that number declined to 19% in spite of the fact that the Aboriginal population surveyed increased by 18% - from 799,010 to 976,305.


6. Out of 50 Aboriginal languages in Canada, only 3, Inuktitut, Cree and Ojibwe were flourishing with over 20,000 who identified an Aboriginal mother tongue.

7. In the 2001 census data, however, only Inuktitut showed an increase in the number of mother tongue speakers. Cree showed a decrease in mother tongue identification from 76,475 in 1996 to 72,680 in 2001 - a decrease of 3,795 or approximately 5% nationwide. Ojibwe showed a decrease from 22,625 in 1996 to 20,890 in 2001 - a decrease of 1,735 or approximately 8% nationwide.
8. Two of the three Aboriginal linguistic groups in Canada that were previously considered ‘safe’: Cree and Ojibwe, showed a significant decline in “Population reporting an Aboriginal identity by mother tongue.” What these statistics demonstrate is that even our two major aboriginal languages that were considered “safe” are now becoming threatened.

9. The Assembly of First Nations considers all Indigenous languages in Canada as “endangered.”

**FACTORS CONTRIBUTING TO FIRST NATIONS LANGUAGE LOSS**

1. Since the mid-1800s, government legislation and policies of “aggressive civilization” were delivered with the explicit intention of “killing the Indian in the child” through forced assimilation in Canadian Residential Schools.

2. Several generations of residential school survivors were severely punished for speaking their language – when and if they returned home, many became parents who could not speak their language and did not know their cultures, leading to a traumatic multi-generational loss of traditional knowledge still felt today.


4. Even when provincial public schools have policies that are meant to ensure Indigenous children receive a culturally responsive education, the policies are not enforced and often the decisions to include Indigenous languages, culture and histories are left up to individual school boards.

5. Severe funding shortages create barriers for community members to teach, learn, use and maintain their languages.

6. Governments consistently fail to provide adequate funding for First Nations language programs in our schools and communities.

7. Although First Nations communities, leadership and organizations have repeatedly urged governments to recognize First Nations languages in legislation – on par with English and French – it is fallen on deaf ears.
WHAT CAN BE DONE TO REVITALIZE FIRST NATIONS LANGUAGES?

1. **Protective legislation** – Immediately create legislation and official recognition to protect indigenous languages

2. **Language Revitalization Programs** – It is imperative and urgent that resources at comparable rates to the funding afforded to the 2008 Roadmap for Linguistic Duality be provided immediately to Indigenous language champions; urgency is due to the loss of Elders and other Traditional Knowledge holders at an alarming rate. The following revitalization programs are recommended:

   A. **Immersion Programming** - This is the most successful method of creating more speakers and increasing the fluency of semi-speakers of First Nations languages by providing them with opportunities to be immersed in the language through daily and traditional cultural activities.

   B. **Pre-School Language Nest** - Immersion pre-school for very young children and parents.

   C. **Master-Apprentice Program** - One-on-one immersion program for learners committed to becoming fluent by intensively working with a fluent speaker.

   D. **Language and Culture Immersion Camps** - Opportunities for fluent speakers of First Nations languages to pass on their language and culture to younger generations through traditional cultural activities.

   E. **Training and Certification** - Developing programs for training and certifying First Nations language teachers and resource people in the community.

   F. **Documentation of Language** - Recording, documenting and preserving First Nation languages.

   G. **Development of Resource Materials** - Developing materials to increase languages use and proficiency.

   H. **Archiving Development** - Language archiving using technology.\(^47\)

\(^47\) Sincere thanks to the First Peoples’ Heritage, Language and Culture Council for sharing their Report on the Status of B.C. First Nations Languages, as cited here.
PROVINCIAL AND TERRITORIAL INDIGENOUS LANGUAGE ACTS

Recent provincial and territorial Indigenous language acts are welcome and show respect to the original languages of Canada; but it is not enough to seriously make an impact in revitalizing Indigenous languages.

- Two Territories in Canada giving official status to Indigenous languages:
  - Nunavut – Inuktitut and Inuinnaqtun are official languages, along with English and French
  - Northwest Territories - Official Languages Act recognizes 11 different Indigenous languages: Chipewyan, Cree, Gwich’in, Inuinnaqtun, Inuktut, Inuvialuktun, North Slavey, South Slavey, Tlicho, along with English and French

- Two Provinces in Canada recognizing Indigenous languages but not as official languages:
  - Manitoba – The Aboriginal Languages Recognition Act, Ch. 24, was assented to on June 17, 2010 and recognizes 7 Indigenous languages: Cree, Dakota, Dene, Inuktitut, Michif, Ojibway and Oji-Cree.
  - British Columbia – The First Peoples’ Heritage, Language and Culture Act, [RSBC 1996], Ch. 147.

AFN CALL FOR ACTION - RECOMMENDATIONS ON INDIGENOUS LANGUAGES AND CULTURE

1. **Protective legislation** – Immediately create protective legislation and official recognition to revitalize, protect and promote the First Languages of Canada, and developed in full partnership with Indigenous peoples that recognizes the constitutional status of our languages.

2. **Language Revitalization Projects** – Imperative and urgent that resources at comparable rates to the funding afforded to the 2008 Roadmap for Linguistic Duality be provided immediately to Indigenous language champions; urgency is due to the loss of Elders and other Traditional Knowledge holders at alarming rates.

3. **Establish a National Foundation or Institute** – that would provide for sustainable and comprehensive support for Heritage language families.

4. **Equitable and sustainable funding.**
2. FIRST NATION CHILD WELFARE AND ENDEMIC SEPARATION OF FAMILIES

The disintegration of Indigenous families continues to be a concern, as Indigenous children are overrepresented within the child welfare system. Specifically, the rate of out-of-home placements in the Indigenous population is more than 10 times the rate of out-of-home placements in the non-Indigenous population in four provinces (i.e. British Columbia -12.5 times\textsuperscript{48}, Alberta - 14.6 times\textsuperscript{49}, Saskatchewan - 12 times\textsuperscript{50}, and Manitoba- 19 times\textsuperscript{51}). In Manitoba, First Nations children represent 15.7% of the child population; yet they represent 69.7% of children in care\textsuperscript{52}. Unfortunately, this is an issue that has burdened Indigenous families since colonization, and Government of Canada policies and programs have fallen short in efficiency and effectiveness to address the situation.

The Auditor General (AG) of Canada audited the First Nation Child and Family Service Program and reported these findings in spring 2008. She echoed the past observations and recommendations of research reports such as the National Policy Review and Wen:De: We Are Coming to the Light of Day. Specifically, the AG found that AANDC (then known as Indian and Northern Affairs) “has not identified and collected the kind of information it needed to determine whether the program that supports child welfare services on reserves is achieving positive outcomes for children”. To date, AANDC has not made significant changes to their program in order to collect this data, and there currently is no consistent or comprehensive disaggregated data collection mechanism for First Nations children in Canada.

In 2007, the AFN and the First Nations Child and Family Caring Society of Canada (FNCFCS) launched a human rights complaint against the Government of Canada alleging that Canada is racially discriminating against First Nations children by applying inequitable child welfare funding.

Evidence for this complaint/claim has been derived from sources such as the National Policy Review (2000), Wen:De Reports (2005), and First Nations Canadian Incidence Studies on Child Abuse and Neglect (1998, 2003, 2008). Research results show on-reserve child welfare services, under the jurisdiction of the Federal Government of Canada, do not provide the same level of funding and service as provided by the

\textsuperscript{48} British Columbia Ministry of Children and Family Development, 2009.
\textsuperscript{49} Alberta Children and Youth Services, 2009.
\textsuperscript{50} Saskatchewan Ministry of Social Services, 2008.
\textsuperscript{51} Manitoba Family Services and Housing, 2007.
\textsuperscript{52} Ibid.
provincial/territorial governments. The Canadian Human Rights Commission (CHRC) investigated the complaint initially and referred it to the Canadian Human Rights Tribunal (CHRT), essentially finding in favour of the AFN and FNCFCS position regarding the discriminatory treatment of First Nations children on reserve. Canada objected to the referral and challenged the jurisdiction of the Tribunal to hear the complaint and coincidentally also appointed a new Chair to the CHRT who proceeded to suspended all hearings relating to the case.

After a considerable delay in rendering a decision on the jurisdictional challenge, the FNCFCS filed a mandamus application to Federal Court to order CHRT hearing dates. On March 14th, the CHRT Chair ruled in favour of the Government of Canada and dismissed the complaint on a legal technicality, instead of the merits of the case. The ruling stated that:

\[
\text{The Act does not allow a comparison to be made between two different service providers with two different service recipients. Federal funding goes to on-reserve First Nations children for child welfare. Provincial funding goes to all children who live off-reserve. These constitute separate and distinct service providers with separate service recipients. The two cannot be compared.}
\]

A judicial review was filed by the CHRC on April 6, 2011. The hearing took place on February 13-15, 2012 in Ottawa, Ontario, Canada. Federal Court Judge Anne Mactavish ordered the Canadian Human Rights Tribunal to again hear the complaint, but with a different panel. Judge Mactavish found that Conservative-appointed tribunal chair Shirish Chotalia committed a litany of errors when she decided to dismiss the complaint. Specifically, judge Mactavish found that the tribunal erred when it failed to provide its reasons for deciding the complaint could not proceed under the Canadian Human Rights Act. The judge also found that the tribunal erred when it found there was nothing to compare Aboriginal Affairs department’s handling of child and welfare services, despite the federal government’s own internal use of provincial standards as a benchmark.\(^\text{53}\)

The federal government has since filed a Notice of Appeal of the Federal Court decision. The federal government is simply using the legal process to avoid dealing with the fact that it is underfunding program and service delivery to First Nations children.

Health and Social Services Access Inequity for First Nations Children

Canada has failed to effectively coordinate and monitor federal, provincial and territorial authorities, in the implementation of policies for the promotion and protection of Indigenous children. Unfortunately, First Nations children, specifically those with special needs, have difficulty accessing needed health and social services, due to jurisdictional disputes involving different levels and/or departments within the government. Specifically, Jordan’s story represents the challenges that many First Nations children with special needs encounter when attempting to access health services:

Jordan was a First Nations child born with complex medical needs. His family did not have access to the supports needed to care for him at their home on reserve; Jordan remained in hospital for the first two years of his life as his medical condition stabilized. Shortly after Jordan’s second birthday, doctors said he could go to a family home. But the federal and provincial governments could not agree upon which department (and which level of government) would pay for Jordan’s at-home care. The jurisdictional dispute would last over two years during which time Jordan remained unnecessarily in hospital. Shortly after Jordan’s fourth birthday, the jurisdictional dispute was settled. However, Jordan passed away in 2007, before he could live in a family home54.

This tragic event inspired the child-first approach, otherwise known as Jordan’s Principle (JP). JP is a policy requiring that jurisdictional disputes between two levels of government regarding payment for health care services for Status Indian children should be dealt with after the child receives the care they need. This is a new standard that aims to replace the prevalent cost disputes that have caused harm to so many First Nations children, like Jordan, when seeking needed health services that would be undisputedly available to any other non-First Nations child.

Regrettably, the intended spirit and adequate implementation of JP has faced a variety of challenges, including Canada’s adoption of a startlingly narrow definition of JP, which has failed other First Nations children55. The current definition of the policy limits the application of JP to Status Indian children who reside on-reserve, have multiple special needs diagnosed by medical professionals, and require the services of multiple health providers. While this attempts to address the prevalent vacuum of care for First Nations children, various critical concerns remain. It is not clear whether Canada’s narrow interpretation and application of JP will allow children to obtain a proper initial diagnosis,

55 Pictou Landing Band Council and Beadle v. Canada (2011)
whether children with only one special need will be able to access care, or whether children residing off-reserve with acute special needs will be able to access care, and finally, the discriminatory principle of limiting access to needed health services based on a set of conditions that other Canadian children are not required to fulfill to access care. Consequently, families are left with the predicament of considering placing their children into the welfare system in order to access services\textsuperscript{56} - a quandary not faced by non-indigenous families. To ensure the removal of prevalent discrimination against First Nations children in accessing health care, Canada must address these issues and adopt a definition and application of JP that will ensure that same standard of care for all Canadian children.

Considering Canada’s actions regarding JP, and considering Canada’s awareness of First Nations poor health status (significantly below the national average), it is arguable that Canada is in violation of article 24 of the Convention on the Rights of the Child, as well as articles 2, 18, 19, 21, 22 and 24 of the United Nations Declaration on the Rights of Indigenous Peoples. Such violation is a result of the discrimination that First Nations children face based solely on the basis of their race and the policies associated with their race.

“How expectancy is shorter and most diseases are more common further down the social ladder in each society”\textsuperscript{57}…The longer people live in stressful economic and social circumstances, the greater the physiological wear and tear they suffer, and the less likely they are to enjoy a healthy old age”\textsuperscript{58}

Unfortunately, as a result of colonization, First Nations peoples have a long history of compromised social determinants of health which continues to negatively affect today’s children, youth and their families. This history combined with lack of proper action to invest in First Nations wellbeing has resulted in health inequity that has become the norm for First Nations children and youth.\textsuperscript{59}

The health status gap that exists between First Nations children and their non-Aboriginal peers is well documented in a variety of studies. For example, in 2009,

\textsuperscript{58} Ibid
UNICEF released the “Aboriginal Children’s Health: Leaving No Child Behind”\textsuperscript{60} report identified First Nations children and youth as faring significantly worse than non-aboriginal children on a variety of health issues. The following are some statistics from different sources that present the landscape of First Nations children health:

- First Nations mothers and their children experience disproportionately high levels of poverty, household crowding, and multi-generational trauma, compared to mothers in the general Canadian population\textsuperscript{61}.

- Poverty, lower levels of educational completion, household crowding, parent or grandparent residential school attendance, and living in a remote or isolated community were all positively associated with a higher prevalence of maternal smoking. Similarly, maternal smoking during pregnancy was associated with poorer child general health and school failure.\textsuperscript{62}.

- One-third of First Nations children had been told by a health care professional that they had at least one health condition\textsuperscript{63}.

- Close to 50\% of children with chronic condition(s) on reserve, have difficulty accessing health services due to lack of availability of services, facility or doctor/nurse within their area\textsuperscript{64}.

- In regards to mental health, 16.5\% of youth contemplated suicide and 5.9\% have attempted suicide\textsuperscript{65}.

- Lack of access to appropriate resources has made it challenging for First Nations children to have food security. Thus, unbalanced diets and the deterioration of traditional foods have fueled an obesity epidemic, as 62\% of First Nations children living on reserve are either overweight or obese. Unhealthy weight is known to be a precursor for type 2 diabetes among children, and other chronic diseases once they reach adulthood\textsuperscript{66}.

- Another implication of lack of access to a nutritional diet and proper health care services is tooth decay. 91\% of Aboriginal children are affected by dental decay with children averaging 7.8 decayed teeth by the age of six\textsuperscript{67}.

\textsuperscript{60} Aboriginal Children’s Health: Leaving No Child Behind. UNICEF. 2009
\textsuperscript{61} Regional Health Survey – Phase 2. First Nations Information Governance Centre. 2007/2008
\textsuperscript{62} Ibid
\textsuperscript{63} Ibid
\textsuperscript{64} Ibid
\textsuperscript{65} Ibid
\textsuperscript{66} Ibid
• Teen fertility is seven times higher than other Canadian youth, and early parenting compromises access to education, employment, and formal child care\(^{68}\).

• Infant mortality rates (IMR) among Aboriginal Peoples and those living in Canada’s northern communities are estimated to be higher than the general population. The infant mortality rate among First Nations people living on reserve is estimated at 7 deaths per 1,000 live births\(^{69}\) (Canada’s general population IMR is 5 deaths per 1000 live births)\(^{70}\). First Nations IMR may be an underestimate because of current limitations associated with data coverage and quality related to Aboriginal infant births and deaths in Canada\(^{71}\).

• SIDS is the leading cause of death amongst Aboriginal babies in Canada at a rate 2.5 times higher than the national average\(^{72}\).

• The prevalence of FASD in First Nations and Inuit communities may be as high as one in five children\(^{73}\).

• Immunization rates are 20 per cent below the general population, leading to high prevalence rates of preventable diseases\(^{74}\).

• Rates of tuberculosis in northern communities are four times the national average and the number of infections is increasing. The spread of TB is being exacerbated by poor living conditions, poor nutrition, and poverty\(^{75}\).

These statistics provide further evidence that the government of Canada’s investment in the health of First Nations children has been insufficient to protect their rights. Similarly, there are other areas in which First Nations children are receiving significantly inferior funding than their non-First Nations peers. For example, funding for the First Nation and Inuit Child Care Initiative has not been increased in the last 14 years and is based on outdated statistics from 1996 which do not reflect current needs\(^{76}\). Funding for on-

\(^{68}\) Aboriginal Children’s Health: Leaving No Child Behind. UNICEF. 2009
\(^{74}\) Aboriginal Children’s Health: Leaving No Child Behind. UNICEF. 2009
\(^{76}\) Assembly of First Nations. (2010). Resolution 21- Call for Increase in Day Care Funding. Annual General Assembly. Winnipeg, MB.
reserve First Nations children is capped at $6000.00 per child, while Manitoba provides for children off-reserve at a base amount of $15,376 per child.\(^7\)

Despite the success some programs have reached, funding remains to be the main factor preventing these initiatives to benefit all First Nations children – as noted in the previous section detailing coverage of early learning programs such as Aboriginal Head Start and licensed child care.

Another example of limited funding and lack of coordinated continuum occurs in mental health initiatives. Health Canada’s funding over the past several years has largely focused on specific mental health and addictions issues (i.e. youth suicide prevention, addictions treatment, Indian Residential Schools (IRS) supports). Federal mental health services focus upstream on general prevention and promotion activities targeting the community; downstream on crisis response, primary prevention and issues specific programming, but lack services that cover a full continuum of care. Often times programs are funded based on a single fiscal year and do not allow communities the flexibility needed to respond to emerging issues.

As stated in Canada’s report, in March 2007, the Minister of Health appointed Dr. Kristinn Kellie Leitch as his Advisor on Healthy Children and Youth. Dr. Leitch released the report “Reaching for the Top”, in which she highlights the health and social gap between Indigenous children and their non-Indigenous peers. Similarly, Dr. Leitch recognized the concerns relating to the status of Indigenous children’s social determinants of health: “There are a number of social determinants of health including poverty, housing and education that seriously affect the health of First Nations, Métis, and Inuit children and youth. They are chronic and challenging issues to address”. In addition, this report put forward recommendations; the following are recommendations that coincide with AFN’s child and youth advocacy work:

- As the Aboriginal Head start program only reaches 19% of the Canadian Aboriginal population, it is recommended that the Aboriginal Head Start Program be expanded with the goal of up to 25% of Aboriginal children and youth having access to the program within five years.

- Working with Aboriginal communities, provinces and territories, Health Canada and the Public Health Agency of Canada should begin to develop a specific Aboriginal Children and Youth Health Strategy as recommended by the

\(^7\) Ibid
Canadian Medical Association, Canadian Paediatric Society, and the College of Physicians and Surgeon of Canada.

- It is recommended that support be provided to significantly increase both the quantity and scope of pediatric surveillance activities across the country in key areas – injury prevention and safety, obesity and healthy lifestyles, and mental health and chronic illness especially among rural and ethnic populations.

- Canada is currently experiencing a tuberculosis (TB) epidemic in our northern, Aboriginal communities. This is almost unprecedented world-wide in this quarter century. Rates of tuberculosis in northern communities are four times the national average and the number of infections is increasing. As active tuberculosis is contagious, it is recommended that surveillance and treatment programs be funded and implemented to ensure that all Canadian children and youth at risk of exposure for TB are tested and treated by public health nurses, such that this TB epidemic is stopped before further spread is encountered.

Unfortunately, Canada has failed to follow up on the issues brought up by Dr. Leitch, regarding Indigenous children’s health. This is disappointing as Dr. Leitch’s appointment as the Advisor on Healthy Children and Youth, was promoted by the government of Canada as “an important step forward as this government works to address child health issues nationwide”\textsuperscript{78}; yet this action has not had any tangible impact on improving the current system that continues to fail to protect the rights of Indigenous children and youth.

\textsuperscript{78} Canada’s Third and Fourth Reports on the Convention on the Rights of the Child.
AFN CALL FOR ACTION: RECOMMENDATIONS ON CHILD WELFARE AND CHILD HEALTH

1. **Reform First Nations child welfare** by conducting extensive and methodologically sound research to determine the outcomes of the current child welfare system; create a First Nations child welfare data management system; and, take the necessary steps to bring the standards of the current welfare system to mirror those held by the general Canadian child welfare system within the next five years. Also, ensure that First Nations governments actively participate in all stages of the aforementioned processes, and that sustainable and appropriate funding models be allocated to such processes.

2. **Facilitate immediate access to health care for all First Nations children**: To create a national committee composed of members of First Nations, Provincial/Territorial, and Federal governments to work to reduce the health disparity between First Nations children and non-Indigenous children, by at least 25% over five years; and to hold official discussions between Provincial/Territorial, Federal, First Nations governments, and NGO’s to create an implementation plan for Jordan’s Principle, in which all First Nations children receive the same standard of care as their non-Indigenous peers.

3. **To increase funding to support current successful programs and to eliminate inequity**: It is recommended that funding formulas are created with current population information, and with full and meaningful participation of First Nations. Furthermore, current successful programs should be expanded to benefit all First Nations children across Canada. Specifically, provide the necessary funding and resources to make AHSOR accessible to all First Nations communities within the next five years.

4. **To create effective channels of communication and collaboration between government departments and First Nations government**: There is an immediate need to reform all levels of government interdepartmental collaborative work when it comes to First Nations children health and social policies and programs. Communication and collaboration between government departments and First Nations government must be continuous and effective, to avoid duplication and maximize the utilization of available resources. Most importantly, First Nations government input must be tangible in the resulting policies and programs.
3. FIRST NATION YOUTH CRIMINAL JUSTICE

Despite objections from many sectors including First Nations peoples, Canada recently enacted omnibus legislation, Bill C-10, that made sweeping amendments to the Criminal Code, radically reduced sentencing options through the imposition of mandatory minimums for serious offenses and made several amendments to the Youth Criminal Justice Act. The youth justice system is different from the adult justice system for a good reason. Young people under age 18 are developing into adults but are not yet mature adults, and as such, do not have the same cognitive capabilities. Bill C-10 adopts this through the concept of “diminished moral blameworthiness” and the inclusion of this principle is an important improvement in Section 3(1)(b). This is consistent with the Convention on the Rights of the Child. The Youth Criminal Justice Act had sought the balance measures to deal with serious violent offenders and pursuing alternative measures for non-violent offenders.

According to the Canadian Centre for Justice Statistics, overall crime has been falling since the early 1990s and violent youth crime has remained stable for several years. Every province and territory has experienced reductions in youth court caseloads since the introduction of the Young Offenders Act and fewer youth cases are resulting in custodial sentences being imposed. In its creation, the Youth Criminal Justice Act recognized that most youths come in contact with the law as a result of fairly minor and isolated incidents. It recognized the importance of not unnecessarily drawing those youths into the criminal justice system, but rather taking advantage of extra-judicial measures, such as warnings, cautions and referrals, mediation and family conferencing as appropriate sanctions.

However, as a contrast to these overall trends, incarceration of First Nation youth increases. First Nations youth are criminalized and jailed at earlier ages and for longer periods of time than other youth. Indigenous peoples are generally are over-represented in prisons (approximately 17% v. 4% of the Canadian adult population) and almost half of the Indigenous offender population are under the age of 30. The Office of the Correctional Investigator has noted that the Indigenous offender population differs in a number of ways:

- They tend to be younger; to be more likely to have served previous youth and/or adult sentences; to be incarcerated more often for a violent offence; to have higher risk ratings; to have higher need ratings, (particularly in the areas of

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Bill C-10 seeks to reduce reliance on extra judicial measures through expanding the applicable sentencing principles to make them more punitive, narrow, and favouring incarceration. These changes will have very serious consequences for young persons, resulting in more youths going to jail and going to jail for longer periods. Given the current overrepresentation of First Nations youth in the criminal justice system, the AFN asserts that First Nation youth will be unfairly targeted by these changes.

Bill C-10 makes the addition of “denunciation and deterrence” to section 38(2). There is little evidence that general deterrence is an effective sentencing principle when applied to adult offenders. One can assume the denunciation and deterrence would be even less effective for young persons. Nevertheless, the inclusion of deterrence as a sentencing principle provides sufficient instructions to a sentencing judges to impose a longer, harsher sentence on young offenders.

Bill C-10 also allows for the stigmatization of young offenders, especially in isolated and remote communities as it amends the publication ban regime in the Youth Criminal Justice Act to allow a court to lifting the ban in cases of violent offences. Previously, publication of a young person’s identity is only allowed where an adult sentence is imposed, or under section 110 for extenuating circumstances. Bill C-10 makes publication of a young offender’s identity possible for anything from simple assault to other violent offenses.

Bill C-10 also includes the definitions for two new offence “serious” offences and “violent” offences. “Serious” offences are defined as an indictable offence for which the maximum punishment is five years or more. “Violent” offences are offence which results in “bodily harm,” and includes threats or attempts to commit such offences.

The AFN believes that both definitions would expose too many youth to pre-trial detention and custodial sentences, when the focus of the Act has always been on meaningful consequences for the most violent and habitual offenders. The definition of a “serious offence” would capture failing to stop at the scene of an accident or Theft Over $5,000. Ironically, the definition is inconsistent with the sentencing limitations which would not permit a custodial sentence for a serious offence. Thus, youths could

be remanded in custody for long periods for offences for which they could not ultimately be sentenced to a period of incarceration.

The overall focus and approach underlying the changes to the Youth Criminal Justice Act and those introduced to the Criminal Code emphasize punishment and incarceration over prevention and rehabilitation which will have long reaching and damaging impacts on youth.

**AFN CALL FOR ACTION – RECOMMENDATIONS ON YOUTH CRIMINAL JUSTICE**

1. Canada should move towards a restorative and rehabilitative model of youth justice. The proposed punitive model will result in too many young people going to jail.

2. Incarceration should be used as a last resort and only apply to serious violent and habitual offenders.

3. First time offenders should continue to be diverted from custody and steered toward rehabilitation.

4. Pre-trial detention should only be used when required for a valid social purpose.

5. Government should focus on reducing poverty, providing quality education, youth programs, especially for First Nation youth. The unnecessary incarceration of young people is a mistake that society will have to pay for over a few generations.