



**FEMMES AUTOCHTONES DU QUÉBEC INC.**  
**QUEBEC NATIVE WOMEN INC.**

**Quebec Native Women Brief**

**As part of:**

*Consultation on Bill 79, An Act to authorize the communication of personal information to the families of Indigenous children who went missing or died after being admitted to an institution*

Presented to the:

COMMITTEE ON CITIZEN RELATIONS – QUEBEC NATIONAL ASSEMBLY

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## **About Quebec Native Women**

Quebec Native Women (hereafter QNW) is a bilingual, non-profit organization founded in 1974 that began as a community-based initiative. Since July 2009, QNW has had consultative status with the United Nations Economic and Social Council (ECOSOC). Quebec Native Women (QNW) is an organization representing women from ten (10) First Nations of Quebec: Abenaki, Anishnabe, Attikamek, Innu, Eeyou, Wendat, Maliseet, Mig'maq, Mohawk and Naskapi. We represent First Nations women as well as urban Indigenous women. In 2015, QNW was recognized by Indigenous and Northern Affairs Canada as an Indigenous Representative Organization (IRO).

QNW's mission is to advocate for the human rights of Indigenous women and their families, both collectively and individually, and to represent the needs and priorities of its members to various levels of government, civil society and decision makers in all areas of activity that affect the rights of Indigenous people.

QNW has contributed to restoring the balance between Indigenous men and women by giving a strong voice to the needs and priorities of women for more than 47 years. QNW brings the needs and priorities of its members to the attention of authorities and decision makers in all areas of our work: health, youth, justice and public safety, women's shelters and the promotion of non-violence, human rights, international law, as well as employment and training. In this context, we play a role in education, awareness raising and research, and provide a structure for women to be active in their communities.

## Context

The phenomenon of missing Indigenous children affects many families in Quebec. The number of children cannot really be determined. For example, the AWACAK organization represents 30 families for a total of 45 missing children, for several communities within a single Indigenous Nation. However, we believe that there may be other families who have lost a child and who might not have participated in the *National Inquiry into Missing and Murdered Indigenous Women and Girls* (hereafter referred to as NIMMIWG), erroneously believing that the disappearance of their child was not covered by the mandate of the NIMMIWG.

Within the context of the NIMMIWG, the complementary report addressed to Quebec asked, in its Recommendation 20, that Indigenous families be given all information concerning children who "were taken from them following admission to a hospital or any other health centre in Quebec<sup>1</sup>". Recommendation 21 of the same report calls on the Quebec government to "create a commission of inquiry on children abducted from Indigenous families in Quebec<sup>2</sup>". In this respect, these recommendations are in line with Recommendation 7 made by Quebec Native Women to the NIMMIWG, asking that a Commission of Inquiry into Missing Indigenous children be set up, and that a summary of the files collected by NIMMIWG be given to the families<sup>3</sup>.

On December 9, 2020, Bill 79<sup>4</sup> was introduced in the Quebec National Assembly. Its objective is to support families in their search for information on the circumstances surrounding the disappearance or death of children following their admission to a health and social services institution, an organization or a religious congregation<sup>5</sup>. In doing so, it appears to address the NIMMIWG's Recommendation 20, as outlined by Ian Lafrenière, as Bill 79 gives commission of inquiry powers to the ministry responsible for Indigenous affairs.

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<sup>1</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Our Power and Place*. A companion report to the National Inquiry into Missing and Murdered Indigenous Women and Girls (KEPEK-QUEBEC), vol. 2, Ottawa, 2019, p 164

<sup>2</sup> *Ibid*

<sup>3</sup> Quebec Native Women, KA UTSHINIKANAT UTINNIUNNUAU Those Whose Lives Have Been Taken, Brief to the NIMMIWG, 2018

<sup>4</sup> Bill 79, An Act to authorize the communication of personal information to the families of Indigenous children who went missing or died after being admitted to an institution, 1st Sess, 42nd Leg, Quebec, 2020 (introduced 9 December 2020) [Bill 79].

<sup>5</sup> *Ibid.*, art. 1.

On March 18, 2021, Quebec Native Women was asked to review the bill.

### **Preliminary Comments**

According to the *United Nations Declaration on the Rights of Indigenous Peoples* (hereinafter UNDRIP), the principles of which were recognized by the National Assembly in 2019, Indigenous peoples affected by legislative measures have the right to free, prior and informed consent<sup>6</sup>. It is important to mention here that the consultation process regarding this bill did not take place before it was proposed. Quebec Native Women, as a representative Indigenous organization, should have been consulted before the bill was proposed, just like other Indigenous organizations. The issue of missing Indigenous children is a human rights issue that should have required prior consultation with families to meet their needs.

Moreover, two weeks' notice to draft a brief on such an important issue is very short for busy and overstretched organizations such as ours. A consultation with families should have been organized to become familiar with their needs and to study Bill 79 in accordance with these needs.

That being said, Quebec Native Women is proposing a study of this bill, and thanks you in advance for your attention to this matter.

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<sup>6</sup> *UN Declaration on the Rights of Indigenous Peoples*, GA Res A/RES/61/295, October 2, 2007 [UNDRIP], Art. 51

## **SUMMARY**

The disappearances of Indigenous children constitute a serious violation of human rights and took place in a colonial context of policies of assimilation and erasure of Indigenous people. The relatives and families of the children have a right to the truth about grave human rights violations, as recognized by both international and national law. Searching for and establishing the truth is both an individual right, as it ensures the psychological safety and integrity of Indigenous families, but also a collective right, to ensure that violations of rights are not repeated, and ultimately reconciliation.

In this regard, Quebec Native Women considers that Bill 79 has too narrow a mandate and that the phenomenon of missing Indigenous children requires the establishment of a commission of inquiry, as requested by QNW before the NIMMIWG and as requested by the NIMMIWG in its Call to Action 21.

This commission would respect the right to the truth by investigating the causes and grounds for the disappearances and deaths of Indigenous children in the context in which they occurred. It would also have the power to search federal documents and archives, church records, Indian agent records, to name but a few, and thus assist families in their search for the truth. This commission should be made up of a full, independent and mostly Indigenous team. Giving the power of inquiry to the Minister responsible for Indigenous Affairs does not seem like a good idea, given that the Minister does not have the independence that a commission of inquiry would have, given the mistrust of the Indigenous people towards the government, and given that it is only a last resort. There is also the fact that this power cannot be based on a governmental identity, without forgetting the share of responsibility of state institutions in the colonial context in which the phenomenon of disappearance originated, which also raises the question of institutional responsibility. QNW also considers that no time limit should be imposed with respect to the right to the truth.

Finally, QNW offers some comments on the inconsistencies of Bill 79 which raise many questions, thus recommending once again the setting up of a commission of inquiry rather than a temporary law.

## Table des matières

|   |           |
|---|-----------|
| <i>I- Disappearances of Indigenous children, a serious violation of human rights in a colonial context .....</i>                  | <i>7</i>  |
| <i>1- Disappearances of Indigenous children and colonialism .....</i>   | <i>7</i>  |
| <i>2- Disappearances of Indigenous children, a flagrant violation of human rights .....</i>                                       | <i>8</i>  |
| <i>II- The right to the truth, a fundamental principle of international law .....</i>   | <i>9</i>  |
| <i>III- The inadequacy of Bill 79 and the need for a commission of inquiry to respect the right to the truth .....</i>            | <i>12</i> |
| <i>1- Refusal to give the causes and reasons for child deaths and disappearances: a violation of the right to the truth .....</i> | <i>12</i> |
| <i>2- A research mandate too limited to establish the truth .....</i>   | <i>14</i> |
| <i>3- 3- An independent inquiry commission replaced by the Minister responsible for Indigenous Affairs.....</i>                   | <i>15</i> |
| <i>4- 4- The burden of truth-seeking.....</i>   | <i>17</i> |
| <i>5- Too short a mandate.....</i>  | <i>18</i> |
| <i>IV- The vagueness of the law, giving rise to numerous questions.....</i>   | <i>19</i> |
| <i>CONCLUSION.....</i>  | <i>21</i> |

## **I- Disappearances of Indigenous children, a serious violation of human rights in a colonial context**

In order to study Bill 79, it is essential to understand the phenomenon of child disappearances as such, and the context in which it takes place.

### **1- Disappearances of Indigenous children and colonialism**

The disappearance of children took place in a particular context, namely in the colonial context and Canada's assimilation policy, which gave rise to many forms of missing children. This policy led to the creation of residential schools. A true cultural genocide<sup>7</sup>, it was in fact Canada's desire to cut children off from their families and cultural ties<sup>8</sup>, to "kill the Indian in the child". It has been estimated that more than 150,000 First Nations, Inuit and Métis children were victims of Residential Schools<sup>9</sup>. The deplorable living conditions, the physical, psychological and sexual abuse were responsible for traumas that are still passed on from generation to generation. Some boarders tried to escape and some succeeded, others died or disappeared in the process, without their families being notified. The mortality rate was high, children were buried in mass graves, or buried in unmarked graves<sup>10</sup>, which is another form of disappearance. Families were not always informed and returns of bodies to families were often refused<sup>11</sup>.

The Canadian government's policy of forced integration also gave rise to the 60s Scoop, with Indigenous children being adopted by non-Indigenous families, sometimes even abroad. Children also disappeared during epidemics. Many children were hospitalized, and until recently some were flown out by plane without their parents<sup>12</sup>, but never returned to their families. The parents were not informed of their child's death, nor of the causes and circumstances of their death<sup>13</sup>.

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<sup>7</sup> Royal Commission on Indigenous Peoples, *Looking Forward, Looking Back*, Vol. 1, Ottawa, 1996; Canada, Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future, Summary of Final Report*, Government of Canada, McGill-Queen's University Press, 2015 [CVR]

<sup>8</sup> *Ibid.* p. 1

<sup>9</sup> *Ibid.* p. 3

<sup>10</sup> *Ibid.* p. 103

<sup>11</sup> *Ibid.* p. 104

<sup>12</sup> *Ibid.* 395

<sup>13</sup> Public Inquiry Commission of Inquiry on relations between Indigenous people and certain public services: listening, reconciliation and progress, Final Report, Quebec, 2019 [VIENS]; p. 57

The transfers of these children to hospitals also led to the placement of children in non-indigenous families without the parents' consent, or to child trafficking. Finally, many children were taken away at birth by the Youth Protection Department in order to place them in non-indigenous families.

Consequently, this phenomenon is part of a colonial context of forced assimilation, erasure and serious human rights violations.

## **2- Disappearances of Indigenous children, a flagrant violation of human rights**

According to Article 1 of the UNDRIP, "Indigenous peoples have the right, collectively or individually, to the full enjoyment of all human rights and fundamental freedoms recognized by [...] international human rights law<sup>14</sup>." These events constitute serious violations of human rights protected under international law.

To name but a few examples of serious human rights violations, the disappearance of children following a hospital stay, in application of Canadian policies, is a serious violation of the right to life and security of children, but also a violation of the integrity and psychological security of parents and families. The right to liberty and security is a fundamental right, protected by international law<sup>15</sup>. The UNDRIP provides that Indigenous people have "the right to life, physical and mental integrity [...]"<sup>16</sup>. With Canada and Quebec being bound by international law, this fundamental right is therefore protected by section 7 of the *Canadian Charter of Rights and Freedoms*<sup>17</sup> and by section 1 of the *Quebec Charter of Rights and Freedoms*<sup>18</sup>. Such infringements are only lawful if they are reasonable and justifiable in a free and democratic society. The abduction of children for adoption into non-native families without the parents' consent is a violation of Articles 7 and 1.

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<sup>14</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Res AG A/RES/61/295, October 2, 2007 [DNUDPA].

<sup>15</sup> See, inter alia, *Universal Declaration of Human Rights*, (1948), Res AG 217 A(III) Doc. A/810; *International Covenant on Civil and Political Rights*, (1976) 999 R.T.N.U. 171, art. 6 and 9, etc.

<sup>16</sup> UNDRIP, art. 15

<sup>17</sup> *Canadian Charter of Rights and Freedoms* (1982), LC 1982, art. 7

<sup>18</sup> *Quebec Charter of Rights and Freedoms* (1975) c-12, art. 1



These colonial practices, which include the disappearances of Indigenous children, are in flagrant contradiction with several norms of international law with regard to the prohibition of forced assimilation. Indeed, this is a violation of Article 7 of the Declaration on the Rights of Indigenous Peoples, but also of Article 8, which prohibits forced assimilation and the destruction of Indigenous culture. It is also a violation of Article 30 of the Convention on the Rights of the Child<sup>19</sup> on the right to cultural life and the right to speak one's own language, to name but a few.

Finally, it seems relevant to highlight that cases of disappearances of children resulting from forced transfers, abductions for adoption by non-Indigenous families, could be considered by international law as an aspect of genocide<sup>20</sup>.

In the light of this context, there is a real need to know the truth and to investigate the root causes of these disappearances. The purpose of a bill to redress these serious human rights violations should be the search for truth and reconciliation with Indigenous peoples.

## **II- The right to the truth, a fundamental principle of international law**

The disappearances of Indigenous children are a serious violation of their human rights. These are disappearances, especially of minors, in a context of erasure of Indigenous peoples and colonialism. In the context of the NIMMIWG, the final report did not hesitate to speak even of genocide against Indigenous women, girls and 2ELGBTQIA+ persons.

Therefore, the systemic causes need to be researched, understood and explained. In order to heal and allow for reconciliation, families need to be aware of the circumstances of their children's disappearances as well as the causes and reasons - the why.

Why were these children treated like this? Why were they prevented from knowing the fate of their children? What are the root causes of this phenomenon? Why so much indifference? What is the reason for this lack of response and transparency?

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<sup>19</sup> *Convention on the Rights of the Child* (1989), Res. AG 44/25

<sup>20</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, Supplementary Report on Genocide, 2019; or Convention on the Prevention and Punishment of Genocide, (1951) Resolution 260 A (III) (1948)

In international law, the right to the truth, particularly concerning missing persons, is a fundamental principle and is widely recognized as an autonomous right at both international and state levels.

The right to the truth at the international level concerning enforced disappearances or missing persons is recognized by a number of important instruments, such as the *Geneva Protocol I*, which provides for the right of families to know the fate of their missing relative<sup>21</sup>. It is also recognized by various intergovernmental bodies<sup>22</sup>. Its legal basis is found, among others, in the *Updated Set of Principles for the Promotion and Protection of Human Rights and the Fight against Impunity*<sup>23</sup>, which defines it as an inalienable right to know the truth about gross human rights violations and serious crimes under international law. It states, inter alia, that every people has the right to know the truth about the events relating to the commission of heinous crimes, as well as about the circumstances and reasons which led, through massive or systematic violation of human rights, to the commission of such crimes. [...]<sup>24</sup>. This right is linked to the State's duty and obligation to protect and guarantee human rights, to conduct effective investigations and to ensure an effective remedy and appropriate reparation<sup>25</sup>.

The existence of the right to the truth in international law is accepted by State practice, both through judicial precedent and through the establishment of various truth-seeking mechanisms, in the period following serious human rights crises or armed conflicts<sup>26</sup>.

The right to the truth is both a collective and an individual right. Victims have the right to know the truth about the violations that affected them, but the truth, the causes, must also be disclosed to society in order to act as a "vital safeguard" and to fight against the recurrence of violations<sup>27</sup>. More generally, this right to the truth helps to facilitate reconciliation.

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<sup>21</sup> *Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, (1949) art. 32

<sup>22</sup> Commission on Human Rights, *The Right to the Truth*, Commission on Human Rights resolution 2005/66; decision 2/105, 27 November 2006; resolution 9/11, 18 September 2008 (A/HRC/RES/36/7); Human Rights Council, A/HRC/RES/12/12).

<sup>23</sup> *Commission on Human Rights, Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher*, (Set of principles) (2005) UN Doc, E/CN.4/2005/102/Add.1

<sup>24</sup> *Ibid* p. 7

<sup>25</sup> Office of the High Commissioner for Human Rights, report "Study on the Right to the Truth", E/CN.4/2006/91 (2006) A/HRC/5/7

<sup>26</sup> *Ibid*.

<sup>27</sup> Set of principles, *supra* note 23, Principle 2

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It has been established that the disappearances of Indigenous children are a serious and gross violation of human rights under international law. Families must be assured of their right to the truth. Reconciliation between the State and the victims cannot be achieved without shedding light on each case of missing Indigenous children.

Bill 79 is examined in light of the context in which the phenomenon occurs and in light of the right to the truth recognized by international law. Although this right to the truth is derived from international law, it applies to Quebec because the latter is bound by international law and the treaties mentioned. The right to the truth must also be respected in order to ensure respect for the family's right to psychological integrity and security, as provided for in the Quebec Charter of Rights and Freedoms<sup>28</sup>. Not knowing the fate of one's child, the grounds and reasons for their disappearance or death, results in psychological suffering for the family. Thus, **to deny the family the right to know the truth, the fate of their children, the causes and reasons for their disappearance or death, is to undermine the integrity and psychological security of the family.**

Although this bill is a step forward in helping the families and loved ones of missing Indigenous children to heal, it seems incomplete and cannot ensure the right to the truth. We therefore request that a Commission of Inquiry into the disappearances of Indigenous children be set up, as recommended by QNW or as recommended by NIMMIWG's Call to Action 21.

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<sup>28</sup> *Quebec Charter of Rights and Freedoms*, *supra* note 18, article 1.

### **III- The inadequacy of Bill 79 and the need for a commission of inquiry to respect the right to the truth**

As stated above, it is necessary to establish and understand the truth, that is, the causes and legacy of historical trauma associated with these disappearances, but also with other events such as forced settlement, deportations, Residential Schools, the grip of religious institutions, physical, psychological and sexual abuse by state officials. This will go a long way to explaining the current reality that families have to deal with, as NIMMIWG has been able to do for women, girls and 2ELGBTQQIA+ people. Prejudice, racism and indifference on the part of state officials are a direct result of this colonial legacy.

The NIMMIWG has called in its Recommendation 21 for the establishment of a commission of inquiry into the disappearance of children, but what is proposed in Bill 79 is incomplete. It is therefore a question here of lifting the limits of the mandate of Bill 79.

#### **1- Refusal to give the causes and reasons for child deaths and disappearances: a violation of the right to the truth**

Over and above the possibility of being informed of the *circumstances surrounding the disappearance or death of these children*, it is important to be informed of the grounds and reasons. However, Bill 79 specifies that the information that will be given to families will only concern the circumstances<sup>29</sup>. It is expected that a summary will be given to the families, but as established above, it seems more appropriate to look for the root causes of this phenomenon and the specific case of each child in order to allow reconciliation.

The legacy of colonization and its policies has created a context of doubt and distrust on the part of Indigenous people towards public institutions and government. Although the children in some cases did actually die of a physical ailment, for some parents the doubt has always persisted. For example, during the NIMMIWG hearings, some families testified that their child, declared dead, had been sent to hospital for eczema<sup>30</sup> or for thrush. In another testimony, the parents were able to see the body of their baby, who had left for the hospital at the age of two months, before the burial.

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<sup>29</sup> Bill 79, *supra* note 4, Explanatory notes and art. 1

<sup>30</sup> NIMMIWG Montreal public hearing of March 13, 2018, testimony of Manon Ottawa, transcripts volume 63, p.

However, the child they saw in the coffin was 10 months old<sup>31</sup>. Thus, in such a case the mother, under Bill 79, would be able to receive the medical documents, find the cause of the baby's death, but would likely doubt the veracity of the medical file or the death certificate.

For another family, two of their children were missing from the hospital, and the parents were notified much later that their children had died<sup>32</sup>. The parents never believed in the death of their children and asked their daughter Françoise Ruperthouse, who testified before you on March 30, 2021, to search for these missing children. She finally found the two children at St-Anne's Hospital in Baie St-Paul, a hospital for the intellectually disabled. Her brother, according to medical documents, had died, but she found her sister, who had an advanced intellectual disability. The family still has questions about what happened. The little girl was healthy with no developmental problems and had been sent to hospital for a bee sting. According to her testimony to the NIMMIWG:

*You know, when we say that our children... the children disappeared, I remember that... I don't remember who said that, but I heard it. We didn't know where the parents lived. That's a big lie. I think it's a big pack of lies because they weren't able to reach my parents for those children, but they were able to reach all the other children to bring them to the Residential School.*

*It's important for us to know what they did with our children. I find out from all sides. I am a person who likes to know things. Then, by reading many articles, we also see that there were medical experiments on Indigenous children. Did they do the same thing with my... my sister and then my brother? I want to know what happened<sup>33</sup>.*

Therefore, the disclosure of information regarding only the circumstances of disappearances or deaths, as provided for in Bill 79, is not sufficient. A commission of inquiry seems more appropriate to address the need for truth, investigation of the grounds and reasons surrounding the deaths and disappearances of Indigenous children

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<sup>31</sup> NIMMIWG Maloténam Public Hearing, Testimony of Armand Echaquan and Viviane Echaquan

<sup>32</sup> NIMMIWG Montreal public hearing of March 13, 2018, testimony of Françoise Ruperthouse, transcriptions volume 63, p. 15

<sup>33</sup> *Ibid.*

## **2- A research mandate too limited to establish the truth**

Quebec Native Women believes that the mandate of Bill 79 is too narrow and may violate the victims' right to the truth. According to the *Set of Principles*, States must take appropriate measures to guarantee access to archives relating to human rights violations. Thus, QNW considers that the mandate should be broader to allow, for example, dialogue with the federal government in order to have access to the archives of churches in their possession, residential schools, writings by Indian agents, hospital funding policies for a "registered Indian" etc.

In fact, beyond the individual search for information, families also want to know why they were not duly informed of the death, or that the child was dying. They would like to know why the body was not returned to them, why the child was buried in a mass grave, even though these children were not orphans or abandoned.

Many questions arise after the medical records have been obtained. What were the guidelines at that time for Indigenous children? Were there any financial incentives? What were the policies related to parental consent in these institutions? Many questions remain unanswered after medical records were obtained. Why were there no death certificates? Why were the families not notified by the hospital? The Indian Agent was required to keep records of "Registered Indians" under the *Indian Act*. What were the guidelines for hospitals or Indian agents regarding the death of an Indigenous child?

Further research should be carried out in the various institutions to trace the practices and guidelines in place at the time for children hospitalized in a city far from the family's place of residence. It would also be necessary to investigate federal government policies that may have had an influence on health care institutions, social and religious institutions. All of these questions cannot be answered by obtaining child-specific medical or social records. In our view, there needs to be a more thorough investigation of the historical and systemic causes of the treatment of families in relation to the loss of their children. Will these records, which are under federal jurisdiction, be analyzed?

Also, many medical documents are impossible to decipher, sometimes too old, containing encrypted medical codes to indicate the causes of death or treatment which are no longer in use and therefore require more precise research.

Our fear with the mandate provided by Bill 79 is that these records cannot be analyzed. It is therefore recommended that a commission be set up to carry out all this work with a team of archivists, researchers, experts, Indigenous people, field workers, investigators, etc. The family cannot carry out this research alone, a full and independent team seems to be necessary.

### **3- 3- An independent inquiry commission replaced by the Minister responsible for Indigenous Affairs**

Bill 79 provides for investigative powers to be given to the Minister responsible for Indigenous Affairs<sup>34</sup>. However, this raises several questions and concerns.

First, there is a sense of unease that the recommendation to establish an inquiry commission has been replaced by giving responsibility to the Minister responsible for Indigenous Affairs, a branch of government and not an independent body as an inquiry commission would be.

In fact, the Minister's power of inquiry to give a summary to the families is a good start and seems to meet a need, but it has not been done in consultation with the families and does not respect NIMMIWG's request to create a specific commission for the phenomenon.

Furthermore, regardless of the Minister's good faith, it seems inappropriate for the Minister to mediate between the demands of the families and the government when he himself is a member of that government, since there is a great deal of mistrust among Indigenous people towards the government and its institutions.

This seems all the more inappropriate as the phenomenon of child disappearances, linked to all other colonial policies, raises the question of state and institutional responsibility.

For all these reasons, it would seem that the responsibility for conducting investigations should be given to an independent commission of inquiry, made up of Indigenous people, which would accompany the victims, as with the NIMMIWG.

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<sup>34</sup> Bill 79, *supra* note 4, Explanatory notes

#### 4- The burden of truth-seeking

What Quebec Native Women wishes to raise above all is the **discretionary** power of the Minister responsible for Indigenous Affairs to assist families<sup>35</sup>. Indeed, it **can** help families. Without doubting the good faith of the Minister, this is not sufficient assurance for families.

Also, the assistance from the minister will come at the end of the search process according to Bill 79. This means that this assistance is only a last resort or last instance and that families will have to go through the entire process before the investigative powers of the *Public Inquiries Act* can be initiated<sup>36</sup>. The minister's assistance may be provided to the Superior Court, at his discretion, in the case of an exhumation request only.

Although the Bill allows extended family members to make a request for access, some families may still face refusal, as the other provisions of the *Access Act* remain in force, namely those that allow access to documents to be refused because they contain information about third parties<sup>37</sup> or could affect a court proceeding in which any of these individuals have an interest<sup>38</sup>.

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All of this means that the burden of finding the truth rests on the shoulders of families, victims under international law, who have lost their children and are traumatized. The process can take several years, especially for families who are traumatized by the loss of a child and unfamiliar with judicial processes. This is a heavy bureaucratic burden for families who have already invested many years in dealing with these public bodies and who will have to go through the tedious and costly bureaucratic process again. The IVAC recognizes, in its interpretation of the statute of limitations, that a person who has experienced a trauma may be unable to act. Some of

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<sup>35</sup> *Ibid.*, art 13

<sup>36</sup> *Ibid.*, Arts 13 and 14

<sup>37</sup> *Act respecting access to documents held by public bodies, s. 88; Act respecting the protection of personal information in the private sector, s. 40*

<sup>38</sup> *Act respecting the protection of personal information in the private sector, art. 39 al. 2*



the testimonies in the NIMMIWG final report also pointed out that the justice system re-traumatizes families and that the search for the truth in the case of a family member is emotionally exhausting, especially when they are refused information.

#### **4 Too short a mandate**

The projected duration of Bill 79 is five (5) years<sup>39</sup>. This seems to us to be too short a time frame, given the scale of this phenomenon and the context in which it occurs. Nor is it in five years that all the solutions will be found and all the reparations will be made. This time frame also seems too short to ensure that families are made aware of this law and are informed of the steps to be taken, and that families carry out the research.

Although this deadline can be extended by one year indefinitely, there is no assurance for families that this will be done. Bill 79 also contains a restriction on the date of a child's entry into hospital, which must have taken place before December 31, 1989. This limit should also not be imposed according to QNW. It is necessary to remove these limits, which are prescriptions and therefore contrary to the respect of the right to the truth.

As a reminder, it is foreseen that this right should not be subject to any limitation<sup>40</sup>, and that "Independent of any legal action, the victims, as well as their families and relatives, have an inalienable right to know the truth about the circumstances in which the violations were committed and, in the case of death or disappearance, about the fate of the victim<sup>41</sup>". QNW is therefore of the opinion that Bill 79 should not limit its mandate in time.

All this leads us to conclude that an independent inquiry commission composed of a complete team dedicated to the search for the truth and accompanying the victims throughout the process is necessary.

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<sup>39</sup> Bill 79, *supra* note 4, Article 5

<sup>40</sup> "Study on the right to the truth", *supra* note 25

<sup>41</sup> "Set of principles". *supra* note 23, p. 7

#### **IV- The vagueness of the law, giving rise to numerous questions**

Should Bill 79 nevertheless be adopted, QNW would like to make some final comments and amendments to the draft.

Under Bill 79, section 6, paragraph 1, since this bill creates an exception to the law, the family should be able to have access to the same documents as ascendants and the holder of parental authority under section 23 of the *Act respecting health services and social services*, which means having access to the complete medical file. It would also be necessary to provide for the accompaniment of the person receiving the information, so as not to leave him or her alone. Article 6 does not provide for access to the mother's file in the case of a missing child. However, perhaps some elements in the mother's medical file could be used to clarify the circumstances and causes of the child's death.

Also, in the case of a missing child still alive, it would be relevant to add the possibility for families to explain their version of the loss of a child. In the colonial context explained above, the child put up for adoption could have been told that his or her parents had abandoned him or her at birth, which could lead to the child not seeking contact with their family of origin.

In addition, Bill 79 contains several inaccuracies, raising questions.

The type of support that the Minister responsible for Indigenous Affairs would provide under Article 3 is not specified. What kind of support will be provided? Will Indigenous healing and traditional methods be taken into account? Also, Article 17 does not specify the type of information that will be included in the report. If a report is issued and documents are collected under section 14 in accordance with the powers of a commission of inquiry, will the findings of the report be protected by the immunity given to witnesses under the *Public Inquiries Act*?

Furthermore, the notion of "information" in Bill 79 is not a sufficient term, in the sense that nothing is specified as to the form. In what form will this information be given? It should not just be a document, it should be accompanied by an explanation so that families understand the actions taken and the treatment their children have undergone. Furthermore, these documents should be accompanied by a doctor or experts.

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The notion of health or social services establishment, organization or religious congregation prevents the taking into account of transports during which some children disappeared, except in the case of "transfer between establishments", but article 6 does not elaborate. How can we be sure that these cases of disappearance will be taken into account by the law?

There are still many questions.

## CONCLUSION

The phenomenon of missing and dead Indigenous children is intrinsically linked to colonial policies of assimilation. The mandate proposed by Bill 79 is flawed and too narrow to ensure that the families' right to the truth is respected and to take a step towards reconciliation. The search cannot be carried out solely by the families with the discretionary and ultimate assistance of the Ministry of Indigenous Affairs. This would be like implementing a bureaucratic solution to a problem of serious human rights violations.

There is an urgency to act. Some parents are dead, others are still searching for the truth and risk passing away, without knowing the fate of their missing child, without having any answers, without even being certain that their child is dead. Quebec Native Women is convinced that a commission of inquiry must be set up to adequately respond to the need for research and elucidation of the systemic causes of this phenomenon.

WE WANT TO THANK YOU FOR YOUR ATTENTION TO OUR RECOMMENDATIONS,  
ALL IN THE SPIRIT OF ENSURING THE SAFETY OF OUR GIRLS AND WOMEN

**Nia:when, Migwetc, Tshinashkumitin, Wela'lin, Wli Wni, Tiawenhk Merci, Thank  
you!**