



**Chair in Indigenous  
Governance**

RYERSON UNIVERSITY



**FAFIA-AFAI**

Feminist Alliance for  
International Action / Alliance Féministe pour  
l'Action Internationale

CANADA



**CANADA WITHOUT POVERTY  
CANADA SANS PAUVRETÉ**

# **A National Action Plan to End Violence against Indigenous Women and Girls: The Time is Now**

The **Canadian Feminist Alliance for International Action (FAFIA)** is an alliance of more than sixty women's organizations, Indigenous and non-Indigenous, with specialized expertise on women's human rights. FAFIA is dedicated to advancing the equality of all women, and to ensuring that Canadian governments respect, protect, and fulfill the commitments to women that they have made under international human rights law. FAFIA has devoted over a decade of work to addressing the human rights crisis of murders and disappearances of Indigenous women and girls.

**Dr. Pamela Palmater** holds the **Chair in Indigenous Governance at Ryerson University** and is one of Canada's leading authors and commentators on current laws and policies that impact Indigenous peoples and Nations. As well as teaching and writing, Dr. Palmater provides advice directly to First Nation communities, and serves as an expert, appearing before various domestic and international investigatory bodies on government laws, policies, and practices that affect Indigenous peoples. Part of her research is focused on the root causes of violence against Indigenous women and girls.

**Canada Without Poverty (CWP)** is a charitable organization whose primary purpose is the relief of poverty in Canada. CWP has a network of over 10,000 individuals and organizations representing low-income people; CWP is the leading national anti-poverty organization in Canada. With a board of directors comprised of persons with lived experience of poverty, CWP has expertise in poverty, homelessness, inadequate housing, food insecurity, and their impacts on women and Indigenous peoples. CWP has leading expertise on the obligations of government under international human rights law regarding social and economic rights and their fulfillment. CWP assists governments in the design of anti-poverty and housing strategies.

## Acknowledgments

FAFIA and Partners thank Indigenous women and girls in Canada and their community of allies who seek to protect and advance Indigenous women's and girls' human rights so that they can live life free from the racist and sexist violence that is perpetrated against them.

FAFIA and Partners also thank the many women who contributed to this submission, particularly Shelagh Day, Liz Majic, Pamela Palmater, Dora Chan, Leilani Farha, Michèle Biss, Harriett McLachlan, and Lara Koerner Yeo. FAFIA and Partners also extends a sincere thanks to the law and social work students who provided invaluable assistance, Chelsey Legge, Alefia Ghadiyali, Alyssa Warias, Julia McArthur, Alexandra Zannis, Shahrzad Sekhavati, Ravital Zabarsky, Vanita Clare, and Peter Ochs, as well as the law clinics that supported the law students' work, the Feminist Advocacy Clinic at Osgoode Hall Law School, and the International Human Rights Program at the University of Toronto Faculty of Law.

### *University of Miami Human Rights Clinic*

FAFIA and Partners owe a special thanks to Caroline Bettinger-Lopez (Director) and Tamar Ezer (Associate Director) at the Human Rights Clinic at the University of Miami, and their students, Maia Dombey and Janelle Rodriguez-Mena, for teaching us about the right to truth, and for their research and writing on this subject for this submission.

## Table of Contents

<b>Introduction.....</b>	<b>1</b>
<b>Acknowledging the Human Rights Crisis .....</b>	<b>1</b>
<b>Indigenous Women and Girls.....</b>	<b>2</b>
<b>Causes of Violence .....</b>	<b>3</b>
<b>Governments and their Human Rights Obligations .....</b>	<b>6</b>
<b>International Human Rights Standards .....</b>	<b>9</b>
a. Rights to Equality and Non-Discrimination.....	9
b. Social and Economic Rights .....	10
c. Violence and Due Diligence .....	11
d. Right to Truth: Families, Communities and Canadian Society.....	15
e. Commentary by Human Rights Experts and Bodies .....	19
<b>Failures to Implement the Rights of Indigenous Women and Girls .....</b>	<b>22</b>
<b>1) Indian Act Sex Discrimination .....</b>	<b>22</b>
<b>2) Social and Economic Conditions.....</b>	<b>28</b>
<b>3) Child Welfare and Child and Family Services .....</b>	<b>36</b>
<b>4) Police and Justice System .....</b>	<b>42</b>
a. Racialized and Sexualized Violence in Policing.....	42
b. Under-protection .....	46
c. Police Accountability and Oversight.....	47
d. Data Collection .....	47
e. Criminalization, Incarceration, and Over-classification of Indigenous Women .....	50
<b>Priority Recommendation: A National Action Plan.....</b>	<b>51</b>
a. Government of Canada Leadership .....	51
b. Use of the Federal Spending Power .....	52
c. Coordination with Provinces, Territories, and Indigenous Women .....	52
d. Indigenous Women's First Voice .....	53
e. Monitoring and Review .....	53
f. Rights Claiming Mechanism.....	53
<b>Recommendations .....</b>	<b>54</b>
<b>Conclusion .....</b>	<b>59</b>

<b>Appendix A: The over-incarceration of Indigenous women in Canada Canadian Association of Elizabeth Fry Societies.....</b>	<b>I</b>
Introduction .....	I
Common Systemic Factors contributing to MMIWG and Over Incarceration .....	I
Violence .....	II
Poverty .....	II
Access to Justice.....	III
Inside Prison.....	IV
Indigenous women over-classified and segregated .....	VI
CAEFS' Recommendations .....	VII
Conclusion .....	X
<b>Appendix B: A Human Rights Claiming Mechanism of the National Action Plan</b>	<b>XI</b>
Limited Scope of Human Rights Commissions and Tribunals .....	XI
Recommendations for a human rights claiming mechanism in a National Action Plan .....	XIII
<b>Appendix C: Statistics on Policing.....</b>	<b>XV</b>

## Introduction

*There is one fundamental fact: her murder was a racist and sexist act.  
Betty Osborne would be alive today had she not been an Aboriginal woman.*

– Report of the Aboriginal Justice Inquiry of Manitoba<sup>1</sup>

1. This submission of the Canadian Feminist Alliance for International Action (FAFIA) and Partners, Canada Without Poverty and Dr. Pamela Palmater, Chair in Indigenous Governance at Ryerson University, focuses on the lives and rights of Indigenous women and girls, and on the obligations of governments – federal, provincial and territorial – to prevent and remedy the violence against them.

***“Governments have obligations to prevent and remedy violence against women.”***

## Acknowledging the Human Rights Crisis

2. Canada is in the midst of a human rights crisis of its own making. Over time, colonizing settler governments have built an "infrastructure of violence",<sup>1</sup> which is a complex of institutional laws, practices, policies, actions, and omissions that constructs First Nations, Métis and Inuit women as lesser human beings – sexualized, racialized, and disposable – because of their gender and their Indigeneity.<sup>2</sup> This infrastructure of violence did not evolve naturally, nor is it an inevitable result of cross-cultural contact. Rather, it was created and maintained by colonial governments in order to clear the lands for settlement, development and resource extraction. It remains firmly in place today, and manifests itself in the high rates of violence, exploitation, rapes, disappearances, and murders experienced by Indigenous women and girls.

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<sup>1</sup> Sherene Razack, "From Helen Betty and Pamela, to Cindy and Loreal: Thoughts on the Inquiry into Missing and Murdered Indigenous Women" (2018), paper in possession of FAFIA. For discussion of structural violence, see: Status of Women Canada, Cecilia Benoit, Leah Shumka, Rachel Phillips, Mary Clare Kennedy, Lynne Belle-Isle, "Issue Brief: Sexual Violence Against Women in Canada" (December 2015), commissioned by the Federal-Provincial-Territorial Senior Officials for the Status of Women, online: <<https://www.swc-cfc.gc.ca/svawc-vcsfc/index-en.html>>.

<sup>2</sup> UNHRC, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, 30th Sess, adopted 6 August 2015, UN Doc A/HRC/30/41, at 1, online: <<https://undocs.org/A/HRC/30/41>> [UNHRC Corpuz Report 2015].

3. Although all governments in Canada have agreed to the National Inquiry into Missing and Murdered Indigenous Women and Girls (“the Inquiry”) and agree that there is a crisis of murders

**“Canada is in the midst of a human rights crisis of its own making.”**

and disappearances to be addressed, they are still active perpetrators and perpetrators of the violence. Ending this crisis requires a crisis-level response that matches the scope and severity of the rights violations against Indigenous women and girls; it also requires immediate and

strategic action. Therefore, the overarching and key recommendation of this submission is that federal, provincial, and territorial governments, working with Indigenous women and their communities, design and implement a coordinated, comprehensive, and measurable National Action Plan to end violence against Indigenous women and girls.

### Indigenous Women and Girls

4. Violence against Indigenous women and girls is a brutal reality created by the interlocking forces of racism and sexism. These forces combine to create a violent, often lethal form of misogyny. Indigenous women experience three times more violence than other women, whether it is spousal or stranger violence,<sup>3</sup> and the violence is more severe, more likely to result in physical injury or death.<sup>4</sup> In 2015, Statistics Canada reported that the national homicide rate for Indigenous women is seven times higher than for non-Indigenous women.<sup>5</sup> Although they are only about 4% of the population, Indigenous women are now 25% of all female murder victims in Canada.<sup>6</sup> Notably, the homicide rates for Indigenous women are even higher in Manitoba (49%) and Saskatchewan (55%).<sup>7</sup> Pauktuutit reports that Nunavut is the most dangerous place in

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<sup>3</sup> Statistics Canada, “Violent victimization of Aboriginal women in the Canadian provinces, 2009,” by Shannon Brennan, Catalogue No 85-002-X (Ottawa: Statistics Canada, 17 May 2011), online: <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2011001/article/11439-eng.pdf?st=C7hdYu96>> [Violent victimization of Aboriginal women in the Canadian provinces].

<sup>4</sup> Violent victimization of Aboriginal women in the Canadian provinces, *ibid.*

<sup>5</sup> Statistics Canada, “First Nations, Métis and Inuit Women,” in *Women in Canada: A Gender-based Statistical Report*, by Vivian O’Donnell and Susan Wallace, Catalogue No 89-503-X (Ottawa: Statistics Canada, July 2011) at 43, online: <<https://www150.statcan.gc.ca/n1/pub/89-503-x/2010001/article/11442-eng.pdf>> [First Nations, Métis and Inuit Women].

<sup>6</sup> Katie Scrim, “Aboriginal Victimization in Canada: A Summary of the Literature” in *Victims of Crime Research Digest*, Issue 03/2010 (Ottawa: Department of Justice Canada, 2010) 15 at 16, online: <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/rd3.pdf>>.

<sup>7</sup> Pauktuutit, Anânaukatiget Tuminqit, Saturviit, The Ottawa Inuit Children’s Centre and the Manitoba Inuit Association, *National Inquiry into Missing and Murdered Indigenous Women and Girls: Written submissions* (November 2018) at para 18; Statistics Canada, *Violence against Women in Canada’s Territories*, fact sheet based on *Measuring violence against women: Statistical trends*, ed by Maire Sinha, Catalogue No 85-002-X (Ottawa: Statistics Canada, 25 February 2013), online: <https://swc-cfc.gc.ca/violence/resources-ressources/violence-territories-territoires-eng.pdf> [Violence against Women in Canada’s Territories].

Canada to be a woman, and that women in Nunavut are the victims of violent crime at a rate more than 14 times the rate for women in the rest of Canada. The rate of intimate partner violence is the highest in the country, and the risk of being sexually assaulted in Nunavut is 12 times greater than the provincial/territorial average.<sup>8</sup>

***“Violence against Indigenous women and girls is a brutal reality created by the interlocking forces of racism and sexism.”***

5. However, these numbers, while shocking, still do not tell the whole story of violence against First Nations, Métis, or Inuit women. Most violence against Indigenous women is not reported to the police.<sup>9</sup> In addition, the

reporting that police forces do is patchy and inconsistent, resulting in unreliable data. All indications are that violence against Indigenous women and girls is under-reported, and numbers in all categories – spousal violence, sexual assaults, disappearances and murders – are probably considerably higher.

### **Causes of Violence**

6. Colonial governments, through racism and sexism, have created a system, or infrastructure of inequality, which makes Indigenous women and girls targets for violence. This infrastructure has its roots in colonial practices, some historical and some continuing, including:

- The dispossession of lands and resources, forced relocations, and disassociation from traditional cultures, languages, and decision-making practices, all of which have had a profoundly negative impact on the status and roles of Indigenous women in their communities;<sup>10</sup>

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<sup>8</sup> Violence against Women in Canada’s Territories, *ibid*.

<sup>9</sup> Statistics Canada, “Violent victimization of Aboriginal women in the Canadian provinces, 2009,” by Shannon Brennan, Catalogue No 85-002-X (Ottawa: Statistics Canada, 17 May 2011), online: <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2011001/article/11439-eng.pdf?st=C7hdYu96>> [Violent victimization of Aboriginal women in the Canadian provinces]; Human Rights Watch, “Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada” (February 2013), online: <[https://www.hrw.org/sites/default/files/reports/canada0213webwcover\\_0.pdf](https://www.hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf)> [Those Who Take Us Away].

<sup>10</sup> Violent victimization of Aboriginal women in the Canadian provinces, *supra*.



- The historical treatment of Indigenous women as sexualized commodities by male European settlers,<sup>11</sup> Indian agents<sup>12</sup> and members of the Northwest Mounted Police,<sup>13</sup>
- The harmful impacts on Indigenous women of the imposition of patriarchal values and structures on their cultures and communities;
- The legalized construction of First Nations women as the property of men through the *Indian Act*,<sup>14</sup> who could not transmit Indian status in their own right and lost status if they married a non-Indian;
- The expulsion of First Nations women from their communities through *Indian Act* sex discrimination;
- The history of removing First Nations, Métis,<sup>15</sup> and Inuit children from their mothers, families, and communities to place them in residential schools, or 'scoop' them and place them in non-Indigenous homes, which has caused inter-generational damage to parental relationships and to relationships between women and men;
- The current practice of apprehending babies from Indigenous mothers at birth, or removing them from their mothers and families to place them in foster care or group homes, without care for the profound harms to Indigenous mothers, children, and communities;
- The practice of forcibly sterilizing Indigenous women, which continues today, and has been practiced on First Nations, Métis and Inuit women;<sup>16</sup>

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<sup>11</sup> Ron Bourgeault writes: "At no time throughout the fur trade were European women allowed into the territory of Rupert's Land. The absence of women, therefore, made Indian women a valuable sexual commodity to the colonizer." Ron Bourgeault, "The Indian, the Metis and the Fur Trade: Class, Sexism and Racism in the Transition from 'Communism' to Capitalism" (1983) 12:1 *Studies in Political Economy: A Socialist Rev* 45, online: <[https://teachingcommons.lakeheadu.ca/sites/default/files/inline-files/bourgeault\\_%20indian%20metis%20fur%20trade%201983.pdf](https://teachingcommons.lakeheadu.ca/sites/default/files/inline-files/bourgeault_%20indian%20metis%20fur%20trade%201983.pdf)>.

<sup>12</sup> James Daschuk, *Clearing the Plains: Disease, Politics of Starvation and the Loss of Aboriginal Life* (Regina: University of Regina Press, 2013) at 152-154.

<sup>13</sup> Fadi Saleem Ennab, *Rupturing the Myth of the Peaceful Western Canadian Frontier: A Socio-Historical Study of Colonization, Violence and the Northwest Mounted Police, 1873-1905*, p. 100, online: <[https://mspace.lib.umanitoba.ca/bitstream/handle/1993/4109/Ennab\\_Fadi.pdf?sequence=1](https://mspace.lib.umanitoba.ca/bitstream/handle/1993/4109/Ennab_Fadi.pdf?sequence=1)>.

<sup>14</sup> *Indian Act*, RSC 1985 c. I-5.

<sup>15</sup> Legacy of Hope Foundation, "Forgotten: The Metis Residential School Experience" (March 2014), online: <[http://legacyofhope.ca/wp-content/uploads/2016/03/Forgotten-booklet\\_web](http://legacyofhope.ca/wp-content/uploads/2016/03/Forgotten-booklet_web)>.

<sup>16</sup> Karen Stote, *An Act of Genocide: Colonialism and the Sterilization of Aboriginal Women* (Halifax: Fernwood Publishing, 2015); Karen Stote, "The Coercive Sterilization of Aboriginal Women in Canada" (2012) 36:3 *American Indian Culture and Research J* 117. Forced sterilization was practiced on Inuit women in record numbers during the 1970s; in one community more than 25% of Inuit women were sterilized. See Annette J. Browne and Jo-Anne Fiske, "First Nations Women's Encounters with Mainstream Health Care Services" (2001) 23:2 *Western J of Nursing Research* 126. See also John D. O'Neil, "Self-determination, medical ideology and health services in Inuit

- The under-protection and over-policing of Indigenous women and girls,<sup>17</sup> which is rooted in "discrimination, systemic and institutional bias, and political and public indifference."<sup>18</sup>
  - The violence by police against Indigenous women and girls, who are too often abused when in custody, and raped, beaten, harassed and denigrated by police officers.<sup>19</sup>
  - The failure of the justice system to punish, or adequately punish, the perpetrators of violence against Indigenous women and girls, permitting both Indigenous and non-Indigenous men to commit violence against Indigenous women and girls with impunity.<sup>20</sup>
  - The severe economic and social hardships, including high rates of poverty and unemployment,<sup>21</sup> lower educational attainment, poor health, lack of access to clean water, and overcrowded, substandard housing<sup>22</sup> which place Indigenous women and girls at greater risk of experiencing violence, and make them less able to escape from it.
7. These historical and current practices have turned Indigenous women into sexualized, racialized prey for non-Indigenous men,<sup>23</sup> and into targets for family violence and intra-community violence by Indigenous men.<sup>24</sup>

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communities" in Gurston Dacks & Ken Coates, eds, *Northern Communities: The Prospects for Empowerment* (Edmonton: University of Alberta Press, 1989).

<sup>17</sup> The Canadian Press, "Indigenous women overrepresented in Vancouver police checks: Rights advocates," *The Globe and Mail* (12 July 2018), online: <<https://www.theglobeandmail.com/canada/british-columbia/article-indigenous-women-overrepresented-in-vancouver-police-checks-rights/>>.

<sup>18</sup> Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, Doc 30/14, 21 December 2014, at para 207, online: <<https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>> [IACHR Report 2014], citing Wally T. Oppal, *Forsaken: The Report of the Missing Women Commission of Inquiry: Executive Summary* (Victoria: Missing Women Commission of Inquiry, 2012) at 28, online: <<http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>>.

<sup>19</sup> Those Who Take Us Away, *supra*.

<sup>20</sup> See for example the cases of Helen Betty Osborne, Cindy Gladue, and Tina Fontaine.

<sup>21</sup> Canada, Ministry of Aboriginal Affairs and Northern Development, *Aboriginal Women in Canada: A Statistical Profile from the 2006 Census*, Catalogue No 978-1-100-20156-6 (Ottawa: Aboriginal Affairs and Northern Development Canada, 2012) at 59, online: <[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai\\_rs\\_pubs\\_ex\\_abwch\\_pdf\\_1333374752380\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_rs_pubs_ex_abwch_pdf_1333374752380_eng.pdf)> (Aboriginal women in Canada are twice as likely to live in poverty as non-Aboriginal women) [Aboriginal Women in Canada].

<sup>22</sup> First Nations, Métis and Inuit Women, *supra*.

<sup>23</sup> Presentations by Sherene Razack and Mary Eberts at the National Symposium on Missing and Murdered Indigenous Women and Girls (Ottawa: November 17-18, 2018).

<sup>24</sup> There are recent reports of an Indigenous #metoo movement; see e.g. Angela Sterritt, "Indigenous #MeToo catching fire in B.C. First Nations communities," *CBC News* (26 October 2018), online: <<https://www.cbc.ca/news/canada/british-columbia/indigenous-metoo-movement-slowly-catching-fire-in-bc-1.4878759>>. Indigenous women are reporting sexual assaults, harassment and abuse by male First Nations men and by leaders at powwows, meetings, cultural events, and in homes. These accounts from Indigenous women have been slow to emerge. At meetings with representatives of the United Nations Committee on the Elimination

8. Repeatedly Indigenous women, families, civil society organizations, and government committees and working groups have identified two major facets of the governmental and institutional failures that cause and perpetuate the violence:<sup>25</sup>

- The failure of governments in Canada to address and remedy the disadvantaged social and economic conditions in which Indigenous women and girls live – conditions that make them vulnerable to violence and unable to escape it: and
- The failure of the justice system in Canada to protect Indigenous women and girls from violence, to investigate promptly and thoroughly when they are missing or murdered, and to effectively prosecute and punish perpetrators.

9. These are intertwined facets of the profound failure of Canada to eliminate all forms of discrimination against women, and to advance the equality of Indigenous women and girls. As international and regional human rights bodies and mandate holders have stated so clearly, the adoption of measures to address one facet, without addressing the other, will perpetuate, rather than remedy, the violence.

### **Governments and their Human Rights Obligations**

10. Indigenous women and girls are rights-holders. The families and communities of Indigenous women and girls who are victims of violence also have rights that must be respected.

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of Discrimination against Women in 2015, Indigenous women made it clear how difficult it was to tell the stories of abuse by Indigenous men. They expressed fear because, on reserves, it is principally the men who control housing, welfare cheques, and jobs; shame, because of the treatment they have suffered; and loyalty, which causes them to be protective of the men, knowing the discrimination they also face.

<sup>25</sup> See e.g. Amnesty International, “Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada” (October 2004), online:

<<https://www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf>> [Stolen Sisters]; Those Who Take Us Away; Human Rights Watch, “Submission to the Government of Canada on Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence” (June 2017), online: <[https://www.hrw.org/sites/default/files/supporting\\_resources/canada\\_saskatchewan\\_submission\\_june\\_2017.pdf](https://www.hrw.org/sites/default/files/supporting_resources/canada_saskatchewan_submission_june_2017.pdf)>; Native Women’s Association of Canada, “What Their Stories Tell Us: Research findings from the Sisters in Spirit Initiative” (2010), online: <<https://www.nwac.ca/wp-content/uploads/2015/07/2010-What-Their-Stories-Tell-Us-Research-Findings-SIS-Initiative.pdf>>; Pippa Feinstein and Megan Pearce, “Review of Reports and Recommendations on Violence Against Indigenous Women in Canada: Master List of Report Recommendations Organized by Theme” (February 2015), online: <<https://www.leaf.ca/wp-content/uploads/2015/02/Analysis-of-Implementation.pdf>> (See Executive Summary, online: <<http://www.leaf.ca/wp-content/uploads/2015/02/Executive-Summary.pdf>>); House of Commons, Standing Committee on the Status of Women, *Interim Report: Call into the Night: An Overview of Violence Against Aboriginal Women* (March 2011) (Chair: Hedy Fry), online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3>>.

11. Over the last 70 years, Canadian governments have put in place a framework of rights and rules to govern their own conduct and their relationships with residents of Canada, including Indigenous people as individuals and Indigenous peoples as collectivities. This includes statutory human rights laws that exist in all jurisdictions, which prohibit discrimination on the basis of race and gender in employment, public services, and tenancy; *Charter* rights to equality, life, and security of the person (ss. 7 and 15); and the constitutional rights of Indigenous women to the equal enjoyment of Aboriginal and treaty rights and title (s. 35(4)).<sup>26</sup>

12. This framework of rights also includes the international and regional human rights treaties and agreements that Canada has ratified since the end of the Second World War. Canada has been a part of a global movement to recognize the inherent dignity and worth of all human beings as a source of inalienable and fundamental rights. The human rights set out in the *Universal Declaration of Human Rights*, the United Nations' first statement of these rights, guarantees that "All human beings are born free and equal in dignity and rights," have a right to "life, liberty and security of person"<sup>27</sup> and to "a standard of living adequate for the health and well-being of [herself] and [her] family, including food, clothing, housing and medical care and necessary social services."<sup>28</sup> These rights are understood to be indivisible, interdependent, and interrelated.<sup>29</sup>

***"Indigenous women and girls are rights-holders."***

13. They have been further elaborated and incorporated into different treaties to which Canada is a party, including the *International Covenant on Civil and Political Rights* (ICCPR);<sup>30</sup> *International Covenant on Economic, Social and Cultural Rights* (ICESCR);<sup>31</sup> *Convention on the*

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<sup>26</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11, ss. 7 & 15 [*Charter*]; *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11, s 35(4) [*Constitution Act, 1982*].

<sup>27</sup> *Universal Declaration of Human Rights*, adopted December 10, 1948, UN Doc A/RES/3/217A, arts 1 & 3 [UDHR].

<sup>28</sup> UDHR, art 25.

<sup>29</sup> See e.g. Article 5 of the Vienna Convention on the law of treaties (with annex), Concluded at Vienna on 23 May 1969: "All human rights are universal, indivisible and interdependent and interrelated."

<sup>30</sup> *International Covenant on Civil and Political Rights*, adopted December 16, 1966, GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) at 52, UN Doc A/6316 (1966), 999 UNTS 171, entered into force March 23, 1976 (acceded to by Canada in 1976) [ICCPR].

<sup>31</sup> *International Covenant on Economic, Social and Cultural Rights*, adopted December 1966, GA Res 2200 (XXI), GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) at 49, UN Doc A/RES/21/2200 (1966), entered into force January 3, 1976 (acceded to by Canada in 1976) [ICESCR].

*Elimination of All Forms of Racial Discrimination* (CERD);<sup>32</sup> *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW);<sup>33</sup> *Convention on the Rights of the Child* (CRC);<sup>34</sup> and *Convention on the Rights of Persons with Disabilities* (CRPD).<sup>35</sup> Canada is also a signatory to the *UN Convention on the Prevention and Punishment of the Crime of Genocide*, which came into force in 1951 and prohibits States from taking actions with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.<sup>36</sup>

14. In addition, Canada is bound by the *Inter-American Declaration of the Rights of Man*<sup>37</sup> and the *Charter of the Organization of American States*,<sup>38</sup> which iterate a similar set of rights to life, security of the person, liberty, education, health, adequate income and housing, and equality and non-discrimination.

15. By ratifying international treaties and adopting declarations, Canada has committed itself to ensuring that the meaningful enjoyment of the rights set out in them will be a reality for all people in Canada, and that residents can obtain an effective remedy within Canada when these rights are violated. Domestic laws are presumed to be in conformity with international human rights law, and laws such as human rights statutes and the *Charter* are expected to provide domestic recourse for violations.<sup>39</sup>

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<sup>32</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted December 21, 1965, GA Res 2106 (XX), annex, 20 UN GAOR Supp (No 14) at 47, UN Doc A/6014 (1966), 660 UNTS 195, entered into force January 4, 1969 (acceded to by Canada in 1970) [CERD].

<sup>33</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted December 1979, GA Res 34/180, 34 UN GAOR Supp (No 46) at 193, UN Doc A/34/46, 1249 UNTS 13, entered into force September 3, 1981 (acceded to by Canada in 1981) [CEDAW].

<sup>34</sup> *Convention on the Rights of the Child*, adopted November 20, 1989, GA Res 44/25, Annex, 44 UN GAOR Supp (No 49) at 167, UN Doc A/44/49 (1989), entered into force September 2, 1990 (acceded to by Canada in 1991) [CRC].

<sup>35</sup> *Convention on the Rights of Persons with Disabilities*, adopted December 13, 2006, GA Res 61/106, Annex I, UN GAOR Supp (No 49) at 65, UN Doc A/61/49 (2006), entered into force May 3, 2008 (acceded to by Canada in 2010) [CRPD].

<sup>36</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted December 1948, GA Res 260 A (III), entry into force 21 January 1951, in accordance with article XIII.

<sup>37</sup> *American Declaration of the Rights and Duties of Man*, adopted May 2, 1948 by the Ninth International Conference of American States [Bogotá Declaration].

<sup>38</sup> *Charter of the Organization of American States*, adopted April 30, 1948, OASTS Nos 1-C and 61, entered into force December 13, 1951 (acceded to by Canada in 1990).

<sup>39</sup> The Poverty and Human Rights Centre, "The Role of International Social and Economic Rights in the Interpretation of Domestic Law" (2008), online: <[https://povertyandhumanrights.org/wp/wp-content/uploads/2009/07/domesticlaw\\_v6-1.pdf](https://povertyandhumanrights.org/wp/wp-content/uploads/2009/07/domesticlaw_v6-1.pdf)>; see e.g. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, para. 239; *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4, paras. 31-33.

16. On May 10, 2016, Canada announced its full support of the United Nations Declaration on the Rights of Indigenous People (UNDRIP)<sup>40</sup> “without qualification.”<sup>41</sup> Indigenous peoples participated with States in the drafting of UNDRIP. Significantly, as a foundation for the rights to self-determination that follow, Indigenous representatives and States agreed to sweep into Article 1 of UNDRIP all the civil, political, economic, social and cultural rights, including the rights to equality and non-discrimination that are set out in international human rights law.<sup>42</sup> Article 1 guarantees to Indigenous peoples, as collectives or as individuals, all human rights and fundamental freedoms. Article 22(2) specifically requires States to ensure that Indigenous women and children enjoy full protection from all forms of violence and discrimination.<sup>43</sup>

***"[T]he world expects Canada to adhere strictly to international human rights standards, ...and that's what we expect of ourselves too."***

- ***Prime Minister Justin Trudeau at the United Nations General Assembly, September 21, 2017.***

17. On September 21, 2017, Prime Minister Trudeau told the United Nations General Assembly that "the world expects Canada to adhere strictly to international human rights standards, including those set out in UNDRIP, and that's what we expect of ourselves too."<sup>44</sup>

## International Human Rights Standards

### a. Rights to Equality and Non-Discrimination

18. The rights of Indigenous women and girls to equality and non-discrimination are comprehensive. Governments in Canada at all levels are obliged to respect, protect, and fulfill women's right to equality, to take appropriate measures in all fields, and to use the full range of

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<sup>40</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, adopted October 2, 2007, UN GAOR Supp (No 49) at 1, UN Doc A/RES/61/295 (2007) [UNDRIP].

<sup>41</sup> Indigenous and Northern Affairs Canada, "Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples," News Release (Ottawa: Indigenous and Northern Affairs Canada, 10 May 2016), online: <<https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/canada-becomes-a-full-supporter-of-the-united-nations-declaration-on-the-rights-of-indigenous-peoples.html>>.

<sup>42</sup> UNDRIP, *supra*, art 1.

<sup>43</sup> UNDRIP, *ibid*, art 22(2).

<sup>44</sup> Alexander Panetta, "PM to UN: 'Canada remains a work in progress,'" *CTV News* (20 September 2017), online: <<https://www.ctvnews.ca/politics/pm-to-un-canada-remains-a-work-in-progress-1.3599283>>.

governmental powers and capacities to achieve the goal of structural equality.<sup>45</sup> The obligation extends to all forms of discrimination, including violence against women by both State actors and private actors,<sup>46</sup> and to all groups of women,<sup>47</sup> including Indigenous women, and to girls.<sup>48</sup> Indigenous women's right to equality and non-discrimination is also protected by CERD, which obliges governments not to engage in any action or practice of racial discrimination, to ensure that no public authorities or public institutions do so, and "to prohibit and bring to an end...racial discrimination by any persons, group or organization."<sup>49</sup>

19. Article 14 of CEDAW has particular applicability to violence against Indigenous women and girls, as it sets out the rights of rural women to adequate living conditions, access to services, and consultation in the design and delivery of services and programs intended to assist them. Article 14 is significant because many Indigenous women, particularly First Nations women living on reserves and Inuit women, live in remote and northern communities. Their lack of access to health services, shelters, courts, police, transportation, early learning and childcare programs, decent living conditions, and adequate housing are root causes of the violence perpetrated against them – ultimately reducing their ability to escape or recover from it.

20. These rights to equality and non-discrimination, on the basis of gender, race, and Indigeneity, as well as other factors, guarantee to Indigenous women and girls the full enjoyment of all civil, political, economic, social, and cultural rights set out in human rights instruments.

### **b. Social and Economic Rights**

21. Indigenous women and girls are guaranteed the enjoyment of an adequate standard of living, including access to adequate food, shelter and clothing, the right to education, to the highest attainable standard of health, including mental health, to social security, and to just and favourable conditions of work.<sup>50</sup> The fulfillment of these rights is a threshold requirement for the enjoyment of rights to equality, and to life, liberty and security for Indigenous women and girls.

22. However, governments in Canada are reluctant to embrace social, cultural and economic rights, as real or 'hard' rights, like civil and political rights. The UN Committee on Economic, Social and Cultural Rights, in its 2016 review, expressed deep concern about Canada's approach to respecting and fulfilling social and economic rights, noting the unwillingness of governments in

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<sup>45</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, adopted 16 December 2010, UN Doc CEDAW/G/GC/28, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>> [CEDAW GR 28]. See especially paras 9-10.

<sup>46</sup> CEDAW GR 28, *supra* at para 19.

<sup>47</sup> CEDAW GR 28, *ibid* at para 18.

<sup>48</sup> CEDAW GR 28, *ibid* at para 21.

<sup>49</sup> CERD, art 2.

<sup>50</sup> See CESCR, *supra*.

Canada to treat them as rights for which effective remedies for violations can be claimed through domestic courts and tribunals.<sup>51</sup>

23. Canada's legal obligation with respect to economic, social, and cultural rights is to "progressively realize" these rights through the commitment of the "maximum of available resources."<sup>52</sup> With the tenth highest Gross Domestic Product,<sup>53</sup> and one of the fastest growing economies of G7 nations,<sup>54</sup> Canada is among the most highly-resourced countries in the world. It is clear that Canada is failing in its obligation to ensure the maximum of available resources are dedicated to the implementation of economic and social rights for Indigenous women and girls.<sup>55</sup> The bitter irony is that Canada's wealth comes from Indigenous lands and resources.

24. With regard to violence against Indigenous women and girls, the CEDAW Committee, the Committee on Economic, Social and Cultural Rights and the Inter-American Commission on Human Rights have all underlined the necessity of addressing the profound social and economic disadvantage of Indigenous women and girls, if the violence is to be ended.<sup>56</sup>

### c. Violence and Due Diligence

25. For twenty-five years, international and regional human rights bodies have recognized that violence against women is an extreme form of gender-based discrimination. In its new General Comment 35, the CEDAW Committee states:

The Committee considers that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are

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<sup>51</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Canada*, adopted 23 March 2016, UN Doc E/C.12/CAN/CO/6, at paras 5-6, online: <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW4yzVsFh%2fjl1u%2ft0KVExfQT6EfaENdSjJTaz3raPv3QWT3Y59q3zadXvBYMPLNW5%2fsveoBdxLZoVN%2fz31c7YEgqRm0DpoVivqHo2yN5ilam>> [CESCR, Concluding observations 2016].

<sup>52</sup> CESCR, *supra*, art 2(1).

<sup>53</sup> Projected GDP Ranking (2018-2023), online: <<http://statisticstimes.com/economy/projected-world-gdp-ranking.php>>.

<sup>54</sup> "Canada tops G7 in latest IMF estimate for 2017 economic growth, No. 2 in 2018" *CBC News* (October 10, 2017), online: <<https://www.cbc.ca/news/business/imf-canada-economy-g7-1.4347737>>.

<sup>55</sup> CESCR, Concluding observations 2016, paras. 9-10.

<sup>56</sup> IACHR Report 2014, at paras 8, 42, 77-89; Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, adopted 30 March 2015, UN Doc CEDAW/C/OP.8/CAN/1, at paras 106, 111-112, 116-119, online: <[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW\\_C\\_OP-8\\_CAN\\_1\\_7643\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf)> [CEDAW Report 2015]; CESCR, Concluding observations 2016, *supra* at paras 33-34; Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, 42nd Sess, adopted 7 November 2008, UN Doc CEDAW/C/CAN/CO/7 at para 43, online: <<https://www.refworld.org/docid/494ba8ce0.html>> [CEDAW, Concluding observations 2008].



perpetuated. Throughout its work, the Committee has made clear that such violence is a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms, as enshrined in the Convention.

26. The obligations of governments with respect to violence against women have been defined as a standard of due diligence requiring governments to 1) prevent violence against women and girls; 2) protect women and girls from violence; 3) punish those who perpetrate violence; and 4) make reparations, or remedy the violence.<sup>57</sup>

27. The standard of due diligence does not apply only to State response to violence *after* it occurs. It includes "a general obligation of prevention, including the duty to transform patriarchal gender structures and values that perpetuate and entrench violence against women....and to ensure that the root causes and consequences of violence against women are tackled at all levels...."<sup>58</sup> Where particular women and girls are known to be at risk, the State party has "an obligation to set up effective...mechanisms to prevent further harm from occurring."<sup>59</sup>

### Holistic Approach Needed

28. The need for a comprehensive and holistic approach to ending violence against women has been recognized by various international human rights bodies, forums, and mandate holders.<sup>60</sup> The 2007 General Assembly resolution on intensification of efforts to eliminate violence against women recognizes in its preamble that "women's poverty and lack of empowerment, as well as their marginalization...can place them at increased risk of violence..." The resolution urges States to:

[T]ake action to eliminate all forms of violence against women by means of a more systematic, comprehensive, multisectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through

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<sup>57</sup> Commission on Human Rights, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women: Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, 62nd Sess, adopted 20 January 2006, UN Doc E/CN.4/2006/61, online: <[http://dag.un.org/bitstream/handle/11176/257909/E\\_CN.4\\_2006\\_61-EN.pdf?sequence=3&isAllowed=y](http://dag.un.org/bitstream/handle/11176/257909/E_CN.4_2006_61-EN.pdf?sequence=3&isAllowed=y)> [The Due Diligence Standard].

<sup>58</sup> The Due Diligence Standard, *ibid* at paras 15-16.

<sup>59</sup> The Due Diligence Standard, *ibid* at para 82.

<sup>60</sup> *Vienna+20 CSO Declaration*, adopted 26 June 2013, at para 8, online: <<http://viennaplus20.files.wordpress.com/2013/07/vienna-20-cso-declaration-final-post2.pdf>>; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, 20th Sess, adopted 23 May 2012, UN Doc A/HRC/20/16, at paras 61-65, online: <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.16\\_En.PDF](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.16_En.PDF)>.

national action plans...and...national development plans including poverty eradication strategies and programme-based and sector-wide approaches...<sup>61</sup>

29. As a result of the advocacy of FAFIA, in partnership with the Native Women's Association of Canada (NWAC),<sup>62</sup> international and regional human rights bodies have investigated the crisis of murders and disappearances of Indigenous women and girls in Canada.

### Inter-American Commission Investigation and Report

30. After thematic briefings requested by the Native Women's Association of Canada (NWAC) and FAFIA at the Inter-American Commission on Human Rights ("IACHR") in 2012 and 2013, the IACHR launched an investigation into missing and murdered Indigenous women in British Columbia. In December 2014, the IACHR issued its report,<sup>63</sup> setting out in detail Canada's legal obligations to respond to the violence and recommending how Canada can most effectively act on its obligations.<sup>64</sup> A central conclusion and recommendation of the IACHR states:

Addressing violence against women is not sufficient unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed. The IACHR stresses the importance of applying a comprehensive holistic approach to violence against indigenous women. This means addressing the past and present institutional and structural inequalities confronted by indigenous women in Canada. This includes the dispossession of indigenous lands, as well as historical laws and policies that negatively affected indigenous people, the consequences of which continue to prevent their full enjoyment of their civil, political, economic, social and cultural rights. This in turn entails addressing the persistence of longstanding social and economic marginalization through effective measures to combat poverty, improve education and employment, guarantee adequate housing and address the disproportionate application of criminal law against indigenous people....<sup>65</sup>

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<sup>61</sup> Resolution adopted by the General Assembly on 19 December 2006: *Intensification of efforts to eliminate all forms of violence against women*, 61st Sess, adopted 30 January 2007, UN Doc A/RES/61/143, at para 8, online: <<https://undocs.org/A/RES/61/143>>.

<sup>62</sup> FAFIA & NWAC, "Murders and Disappearances of Aboriginal Women and Girls: Report to the Human Rights Committee on the Occasion of the Committee's consideration of the Sixth Periodic Report of Canada Submission to the Human Rights Committee" (June 2015) at 8-12, online: <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fCAN%2f20769&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fCAN%2f20769&Lang=en)> [FAFIA & NWAC HRC Submission].

<sup>63</sup> IACHR Report 2014, *supra*.

<sup>64</sup> See e.g. IACHR Report 2014, *ibid*; FAFIA & NWAC HRC Submission, *supra* at 11-12.

<sup>65</sup> IACHR Report 2014, *ibid* at para 306.

31. The IACHR has since held three follow-up hearings on this issue, in April 2016, December 2016, and December 2017, as Canada's response to the crisis continues to be inadequate.<sup>66</sup>

### UN CEDAW Committee Inquiry

32. In 2014, the CEDAW Committee conducted an investigation under Article 8 of the Optional Protocol to CEDAW. Article 8 permits the Committee to inquire where it receives reliable information indicating grave or systematic violations by a State party of rights set out in the Convention. FAFIA and NWAC requested that the Committee initiate the inquiry in 2011.<sup>67</sup>

33. In its 2015 report ("the CEDAW report"), the Committee found that grave violations of the rights of Indigenous women and girls are occurring in Canada in breach of CEDAW because governments have:

***"...grave violations of the rights of Indigenous women and girls are occurring in Canada."***

***- UN CEDAW Committee, 2015***

- Failed to establish effective legal protection of the rights of Indigenous women and girls and to ensure through competent national tribunals and other public institutions the effective protection of Indigenous women against any act of discrimination (Article 2(c);

- Failed to refrain from engaging in any act or practice of discrimination against Indigenous women and to ensure that public

authorities and institutions also refrain from any act or practice of discrimination (Article 2(d)); and

- Failed to take all appropriate measures to eliminate discrimination against Indigenous women by any person, organization or enterprise (Article 2(e)).<sup>68</sup>

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<sup>66</sup> Inter-American Commission on Human Rights, "Canada: Indigenous Women in British Columbia" (7 April 2016), online: YouTube <<https://www.youtube.com/watch?v=mOPyAG3kXd4>>; Inter-American Commission on Human Rights, "Canada: Murder of Indigenous Women" (9 December 2016), online: YouTube <<https://www.youtube.com/watch?v=TkjSa7JYA30>>; Inter-American Commission on Human Rights, "Canada: Sex Discrimination in Indigenous Law" (7 December 2017), online: YouTube <<https://www.youtube.com/watch?v=-p-UGBTj1Bk&index=4&list=PL5QlapyOGhXt0BSFvgydHBu6yz2atqEN2&t=0s>>.

<sup>67</sup> See FAFIA & NWAC HRC Submission, *supra* at 8.

<sup>68</sup> Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women, under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, adopted 30 March 2015, UN Doc CEDAW/C/OP.8/CAN/1, at paras 214-215, online:

The Committee formulated 38 recommendations for Canada to implement in order to address this crisis, and directed that they be implemented as a whole.<sup>69</sup>

34. The CEDAW Committee found Canada to be engaged in systemic, multiple, and long-standing violations of the human rights of Indigenous women in breach of its obligations under international human rights law.

#### d. Right to Truth: Families, Communities and Canadian Society

35. Violence against Indigenous women and girls causes violations of the rights of their families and communities. The families of missing and murdered Indigenous women, their communities, and Canadian society as a whole, have the fundamental right to know the truth of what has happened to missing and murdered Indigenous women and girls. Canadian governments have corresponding duties to uphold the right to truth, address persisting damage, prevent reoccurrence of human rights violations, and make reparations.

36. The right to truth is recognized by all major international and regional human rights systems, namely the United Nations (UN), Inter-American, European, and African systems.<sup>70</sup> Most often, the right to truth is described as a corollary to several widely recognized basic rights, including

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<[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW\\_C\\_OP-8\\_CAN\\_1\\_7643\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf)> [CEDAW Report 2015].

<sup>69</sup> CEDAW Report 2015, *ibid* at para 216.

<sup>70</sup> Additionally, various UN Human Rights Council and General Assembly resolutions and reports focus on a right to the truth, including *Resolution adopted by the General Assembly on 18 December 2013: Right to Truth*, 68th Sess, adopted 21 January 2014, UN Doc A/RES/68/165, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/449/35/PDF/N1344935.pdf?OpenElement>> [GA Res 68/165 Right to Truth] (preamble recalls “the right of victims to know the truth regarding the circumstances of the enforced disappearance”); UNHRC, *Right to the Truth*, 9th Sess, adopted 18 September 2008, UN Doc A/HRC/RES/9/11, online: <[http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_9\\_11.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_11.pdf)>; UNHRC, *Report of the Office of the United Nations High Commissioner for Human Rights on the seminar on experiences of archives as a means to guarantee the right to truth*, 17th Sess, adopted 14 April 2011, UN Doc A/HRC/17/21, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/128/94/PDF/G1112894.pdf?OpenElement>> (noting at para 5 “the right of each people to know the truth about its past”).

the right to an effective remedy,<sup>71</sup> the right to judicial protection,<sup>72</sup> the right to liberty and security of person,<sup>73</sup> the right to family,<sup>74</sup> and the right to be free from cruel, inhuman and

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<sup>71</sup> UDHR, *supra* art 8 (noting that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”); ICCPR, art 2 (stating “[e]ach State Party to the present Covenant undertakes. . .[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. . .”); Convention for the Protection of Human Rights and Fundamental Freedoms, adopted November 4, 1950, 213 UNTS 221, entered into force September 3, 1953, art 13 [ECHR] (stating “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”); African Union, *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, adopted July 11, 2003, entered into force November 25, 2005, art 25 [Maputo Protocol] (noting “States Parties shall undertake to: (a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated. . .”); Organization of American States, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”)*, adopted June 9, 1994, entered into force March 5, 1995, art 7(g) (obligating States to “establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies”); HRC, Communication No 322/1988, *Rodríguez v Uruguay*, UN Doc CCPR/C/51/D/322/1988 (1994), online: <<http://hrlibrary.umn.edu/undocs/html/vws322.htm>>; *El-Masri v The Former Yugoslav Republic of Macedonia* [GC], No 39630/09, [2012] VI ECHR 263 (concluding that “the right to an effective remedy enshrined in Article 13 [of the European Convention on Human Rights] includes a right of access to relevant information about alleged violations”).

<sup>72</sup> American Convention on Human Rights, adopted November 22, 1969, OASTS No 36, entered into force July 18, 1978, arts 8 & 25 [ACHR]; Bogotá Declaration, arts XVIII & XXIV; *Case of Goiburú et al v Paraguay* (2006), Inter-Am Ct HR (Ser C) No 153, at paras 114 & 133 (finding that the victims’ next of kin have a right to file criminal actions or the corresponding civil suits, and to avail themselves of judicial guarantees and judicial protection).

<sup>73</sup> UDHR, *supra* art 3 (noting “everyone has the right to life, liberty, and security of person”); ICCPR, art 9(1) (stating “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”); ACHR, art 5 (Right to Humane Treatment); ECHR, art 5 (stating “[e]veryone has the right to liberty and security of person.”). See also ACHR, art 7(1) (noting that “every person has the right to personal liberty and security”); Maputo Protocol, art 4(1) (stating “every woman shall be entitled to respect for her life and the integrity and security of her person.”); Organization of African Unity, *African Charter on Human and Peoples’ Rights*, adopted June 27, 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), entered into force October 21, 1986, art 4 [Banjul Charter] (stating “[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person”); *Case of Gonzalez Medina and Family v Dominican Republic* (2012), Inter-Am Ct HR (Ser C) No 75, at para 127 (emphasizing that “in order [for States] to comply with [their] obligation to guarantee effectively the rights to juridical personality, to life, and to personal integrity and liberty, the States must not only prevent, but also have the obligation to investigate any violations of them”).

<sup>74</sup> UDHR, *supra* art 16 (stating “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”); Bogotá Declaration, art IV (stating “[e]very person has the right to establish a family, the basic element of society, and receive protection therefore); Banjul Charter, art 18 (stating “[t]he family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral”). See also HRC, Communication No 30/1978, *Eduardo Bleier v Uruguay*, UN Doc A/37/40 (1982) (holding that the uncertainty regarding a family member’s disappearance is a complete disruption of the right to family and the family is entitled to compensation and a remedy).

degrading treatment.<sup>75</sup> Families of victims of violence have the "right ...to know the truth regarding the circumstances of an enforced disappearance, the progress and results of the investigation and the fate of the disappeared person."<sup>76</sup>

37. The right to the truth first emerged in relation to enforced disappearances—individuals abducted or murdered by government actors—in the 1970s.<sup>77</sup> More recently, the right to truth has been applied to the context of violence against women, and the IACHR has emphasized States' obligation to guarantee timely access to information for the general public,<sup>78</sup> and to publicize findings, during and after an investigation.<sup>79</sup>

38. The right to truth entails corresponding duties of governments, including these duties:

- **To investigate and publicize findings.** The duty to investigate stems from an individual's right to an effective remedy. It includes a right to a "serious and impartial"<sup>80</sup> investigation

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<sup>75</sup> UDHR, *supra* art 5 (stating "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"); ICCPR, art 7, (stating "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"); ECHR, art 3 (stating "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment"); Maputo Protocol, art 4(1) (noting that "[a]ll forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited."); Banjul Charter, art 5 (noting that "[e]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited"); ACHR, art 5(2) (stating "no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment"). See also Human Rights Chamber for Bosnia and Herzegovina, *Selimovic et al v Republika Srpska* ("Srebrenica Cases") (2003), Case No CH/01/8365, at para 191 (holding that the State failure to clarify the fate of the missing through a meaningful and effective investigation and a full statement of disclosure of relevant facts to the public is inhuman and degrading).

<sup>76</sup> *International Convention for the Protection of All Persons from Enforced Disappearance*, adopted December 20, 2006, GA Res 61/177, Annex I, UN GAOR Supp (No 49) at 1, UN Doc A/RES/61/177 (2007), entered into force December 23, 2010, art 24(2) (Canada has neither signed nor ratified this treaty).

<sup>77</sup> See ICCPR. See also OHCHR Study, para 9 (stating "[i]n relation to combating impunity, the rights of internally displaced persons to know the fate of relatives, and in the context of the remedies and reparation for serious human rights violations").

<sup>78</sup> Inter-American Commission on Human Rights, *Access to Information, Violence against Women, and the Administration of Justice*, OR OEA/Ser.L/V/II.154, Doc 19 (2015), at para 54.

<sup>79</sup> Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, OR OEA/Ser.L/V/II, Doc 68 (2007), at paras 54, 134, 139, 172 & 177. See also *Velasquez Rodriguez Case* (1988), Inter-Am Ct HR (Ser C) No 4, at para 177 [*Velasquez Rodriguez Case*] (finding that the duty to investigate "continues as long as there is uncertainty about the fate of the person who has disappeared"); *Bulacio v Argentina* (2003), Inter-Am Ct HR (Ser C) No 100, at para 121 (finding that the incomplete and years-long nature of the State investigation paired with the continuing impunity for those responsible led to continued harm to the family members); *Cyprus v Turkey* [GC], No 25781/94, [2001] IV ECHR 1 (finding that the family members suffer mental anguish in violation of the prohibition against cruel and inhuman treatment when the State fails to investigate the circumstances of a disappearance).

<sup>80</sup> *Case of the Pueblo Bello Massacre v Colombia* (2006), Inter-Am Ct HR (Ser C) No 140, at para 143.

undertaken as part of a genuine<sup>81</sup> search for truth, that has a clear objective,<sup>82</sup> and a duty to ensure that “the public and individuals...have access...to information regarding the actions and decision-making processes of their government.”<sup>83</sup>

- **To publicly acknowledge wrongdoing and commemorate events.** The truth is central to social reconstruction in the aftermath of violence, a process that requires converting private knowledge into official public acknowledgement.<sup>84</sup>
- **To provide reparations.** The right to truth requires governments to provide reparations for victims, their families, and society as a whole.<sup>85</sup>

## Families

39. Families have “the right ... to know the fate of their relatives” and who is responsible for the violation of their human rights.<sup>86</sup> Lack of information can have significant repercussions on families’ abilities to cope and heal.<sup>87</sup> Denying family members access to the truth concerning the fate of

**“Families have ‘the right ... to know the fate of their relatives’ and who is responsible for the violation of their human rights.”**

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<sup>81</sup> IACHR Report 2014, *supra*; see e.g. para 173.

<sup>82</sup> *Velasquez Rodriguez Case*, *supra* at para 177.

<sup>83</sup> UNHRC, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Right to the Truth*, 12th Sess, adopted 12 October 2009, UN Doc A/HRC/RES/12/12, at 3, online: <<http://undocs.org/en/A/HRC/RES/12/12>> [UNHRC Res 12/12 Right to the Truth].

<sup>84</sup> The International Center for Transitional Justice notes meaningful acknowledgement of wrongdoing by the State is the “indispensable ingredient to sustainably rebuilding trust in societies, restoring belief in the dignity of individuals, and... sowing the seeds of reconciliation.” Meaningful acknowledgement can take the form of truth commissions, commissions of inquiry, memorialization, and forms of apology. For more information, see International Center for Transitional Justice, “Acknowledgement” (2018), online: <<https://www.ictj.org/gallery-items/acknowledgment>>.

<sup>85</sup> UNHRC, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, 30th Sess, adopted 7 September 2015, UN Doc A/HRC/30/42, at para 24, online: <<https://www.ohchr.org/Documents/Issues/Truth/A-HRC-30-42.pdf>>.

<sup>86</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, adopted June 8, 1977, 1125 UNTS 3, entered into force December 7, 1978, art 32, online: <<https://www.refworld.org/docid/3ae6b36b4.html>>; UNHRC Res 12/12 Right to the Truth; GA Res 68/165 Right to Truth.

<sup>87</sup> *Velasquez Rodriguez Case*, at para 177. The Human Rights Committee also emphasized States’ responsibility to investigate such violations in *Almeida de Quinteros v Uruguay*, in which the Committee mandated that Uruguay “conduct a thorough inquiry into the allegations made,” and further specifically stated that the victim’s mother “has the right to know what has happened to her daughter.” HRC, Communication No 107/1981, *Almeida de Quinteros et al v Uruguay*, UN Doc CCPR/C/OP/2 (1983), at para 11, online: <[https://www.ohchr.org/Documents/Publications/SelDec\\_2\\_en.pdf](https://www.ohchr.org/Documents/Publications/SelDec_2_en.pdf)>.

disappeared relatives can be a form of cruel and inhuman treatment.<sup>88</sup> In the words of U.N. Secretary General Ban Ki-Moon, “knowing the truth offers individual victims and their relatives a way to gain closure, restore their dignity and experience at least some remedy for their losses.”<sup>89</sup>

### Communities and Canadian society

40. The right to truth also has an important societal dimension. The UN High Commissioner for Human Rights recognizes that societies are entitled “to know the truth about serious human rights violations”<sup>90</sup> as it is essential for prevention of reoccurrence, as well as for social healing and for reinstating the legitimacy of social institutions. Exposing the truth helps “entire societies to foster accountability for violations” and can “provide catharsis and help produce a shared history of events that facilitates healing and reconciliation.”<sup>91</sup> The Inter-American Court on Human Rights likewise emphasized that the right to know the truth is “a collective right that ensures society access to information that is essential for the workings of democratic systems.”<sup>92</sup> Thus, the right to truth is fundamental to the workings of democracy itself and to the principles of transparency, accountability, and respect for human rights.<sup>93</sup>

#### e. Commentary by Human Rights Experts and Bodies

41. In the treaty body and periodic reviews of Canada that have taken place since 2005, international human rights bodies, as well as special procedure mechanisms, have recognized the seriousness of the human rights violations that Indigenous women and girls are experiencing in Canada. Numerous UN treaty bodies have repeatedly expressed concern and made recommendations on the crisis of violence, including the CEDAW Committee,<sup>94</sup> CERD

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<sup>88</sup> See e.g. *Case of the Massacres of El Mozote and Nearby Places v El Salvador* (2012), Inter-Am Ct HR (Ser C) No 252, at para 331, online: <[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_252\\_ing1.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_252_ing1.pdf)>; Srebrenica Cases, at 49.

<sup>89</sup> United Nations, Statement, “Secretary-General’s Message on the International Day for the Right to Truth of Victims of Gross Human Rights Violations” (24 March 2011), online: <<https://www.un.org/sg/en/content/sg/statement/2011-03-24/secretary-generals-message-international-day-right-truth-victims>> [UN Secretary-General’s Message on the International Day for the Right to Truth].

<sup>90</sup> UN Commission on Human Rights, *Promotion and Protection of Human Rights: Study on the Right to Truth, Report of the Office of the United Nations High Commissioner for Human Rights*, 62nd Sess, adopted 8 February 2006, UN Doc E/CN.4/2006/91, at paras 15 & 37, online: <<https://undocs.org/E/CN.4/2006/91>> [OHCHR Study]. See also GA Res 68/165 Right to Truth, on the “fundamental role of civil society, through its engagement, advocacy and participation in decision-making processes, in promoting and achieving respect for the right to the truth.”

<sup>91</sup> UN Secretary-General’s Message on the International Day for the Right to Truth.

<sup>92</sup> Inter-American Commission on Human Rights, *Ellacuría v El Salvador* (1999), Case 10.488, Report No 136/99, OEA/Ser.L/V/II.106/Doc.3, rev, at para 224.

<sup>93</sup> OHCHR Study, *supra* at para 56. See also UN Commission on Human Rights, *Human Rights Resolution 2005/66: Right to the Truth*, adopted 20 April 2005, UN Doc E/CN.4/RES/2005/66 (highlighting the right to truth as a mechanism to “end impunity and to promote and protect human rights”).

<sup>94</sup> CEDAW, Concluding observations 2008, *supra* at para 32; Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, adopted 18 November 2016, UN Doc CEDAW/C/CAN/CO/8-9, at para 24(a), online: <<https://www.cwp->



Committee,<sup>95</sup> the Human Rights Committee,<sup>96</sup> the Committee on Economic, Social and Cultural Rights,<sup>97</sup> Committee Against Torture,<sup>98</sup> and the Committee on the Rights of the Child.<sup>99</sup>

42. Since the 2015 CEDAW report, both the Human Rights Committee<sup>100</sup> and the Committee on Economic Social and Cultural Rights<sup>101</sup> have commented on the crisis of violence against Indigenous women and girls, expressing concern about Canada's "failure to provide adequate and effective responses". These Committees have urged coordination of police responses across the country; investigation, prosecution and punishment of perpetrators; adequate housing and social supports; and identification and elimination of root causes of the violence.

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[csp.ca/resources/sites/default/files/resources/CEDAW\\_C\\_CAN\\_CO\\_8-9\\_25100\\_E\\_0.pdf](http://www.csp.ca/resources/sites/default/files/resources/CEDAW_C_CAN_CO_8-9_25100_E_0.pdf)> [CEDAW, Concluding observations 2016].

<sup>95</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, 70th Sess, adopted 25 May 2007, UN Doc CERD/C/CAN/CO/18, at para 20, online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FCAN%2FCO%2F18&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FCAN%2FCO%2F18&Lang=en)> [CERD, Concluding observations 2007]; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, 80th Sess, adopted 4 April 2012, UN Doc CERD/C/CAN/CO/19-20, at para 17, online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FCAN%2FCO%2F19-20&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FCAN%2FCO%2F19-20&Lang=en)> [CERD, Concluding observations 2012]; Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, adopted 13 September 2017, UN Doc CERD/C/CAN/CO/21-23, at para 23, online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/21-23&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/21-23&Lang=En)> [CERD, Concluding observations 2017].

<sup>96</sup> HRC, *Concluding observations of the Human Rights Committee: Canada*, 85th Sess, adopted 20 April 2006, UN Doc CCPR/C/CAN/CO/5, at para 23, online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F5&Lang=en)> [HRC, Concluding observations 2006]; HRC, *Concluding observations on the sixth periodic report of Canada*, adopted 13 August 2015, UN Doc CCPR/C/CAN/CO/6, at paras 8-9, online:

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6)> [HRC, Concluding observations 2015].

<sup>97</sup> CESCR, Concluding observations 2016, *supra* at para 33.

<sup>98</sup> Committee against Torture, *Concluding observations of the Committee against Torture: Canada*, 48th Sess, adopted 25 June 2012, UN Doc CAT/C/CAN/CO/6, at para 20, online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/6&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/6&Lang=En)> [CAT, Concluding observations 2012]; Committee against Torture, *Concluding observations on the seventh periodic report of Canada*, 65th Sess, adopted 5 December 2018, UN Doc CAT/C/CAN/CO/7, at para 48, online:

<[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CAN/CAT\\_C\\_CAN\\_CO\\_7\\_33163\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CAN/CAT_C_CAN_CO_7_33163_E.pdf)>

(advance unedited version) [CAT, Concluding observations 2018].

<sup>99</sup> Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Canada*, 61st Sess, adopted 6 December 2012, UN Doc CRC/C/CAN/CO/3-4, at para 48, online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCAN%2fCO%2f3-4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCAN%2fCO%2f3-4&Lang=en)> [CRC, Concluding observations 2012].

<sup>100</sup> HRC, Concluding observations 2015, *supra* at para 9.

<sup>101</sup> CESCR, Concluding observations 2016, *supra* at para 33.

43. Seeing no coordinated action to implement the recommendations from its Article 8 Inquiry, in 2016, in its review of Canada, the CEDAW Committee recommended that the National Inquiry use a human rights-based approach to conduct its work,<sup>102</sup> and that Canada fully implement, without delay, all recommendations issued by the Committee in its 2015 report, including developing a coordinated plan for overseeing implementation of the outstanding 37 recommendations issued by the Committee.

44. In 2017, the CERD Committee expressed its alarm at the continuation of the high rates of violence against Indigenous women and girls, supported the 2016 recommendations of the CEDAW Committee, and urged Canada to ensure that the National Inquiry adopts a human-rights based approach to its investigation of the root causes of the discrimination and to solutions.<sup>103</sup>

45. During the Universal Periodic Review of Canada in 2009, recommendations were made to Canada regarding violence against Indigenous women.<sup>104</sup> Canada accepted the underlying principles in these recommendations, which included recommendations that Canada remedy police failures to deal with violent crimes against Indigenous women and girls, and that Canada address the low socio-economic status of Indigenous women and girls as a factor that contributes to the violence against them.<sup>105</sup> In 2013<sup>106</sup> and 2018,<sup>107</sup> during subsequent Universal Periodic Reviews of Canada, these recommendations were made again, with more force and more specificity. In 2018, during the third Universal Periodic Review of Canada, 22 countries recommended that Canada improve its response to violence against Indigenous women and girls.<sup>108</sup>

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<sup>102</sup> CEDAW, Concluding observations 2016, *supra* at para 27.

<sup>103</sup> CERD, Concluding observations 2017, *supra*.

<sup>104</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review: Canada*, adopted 5 October 2009, UN Doc A/HRC/11/17, at paras 33-38, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/152/99/PDF/G0915299.pdf?OpenElement>>. See also *Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, adopted 8 June 2009, UN Doc A/HRC/11/17/Add.1, at para 46, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/139/49/PDF/G0913949.pdf?OpenElement>>.

<sup>105</sup> UNHRC, *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under Review: Response of Canada to Recommendations*, 11th Sess, adopted 8 June 2009, UN Doc A/HRC/11/17/Add.1, at paras 45, 49-50, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/139/49/PDF/G0913949.pdf?OpenElement>>.

<sup>106</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review: Canada*, adopted 28 June 2013, UN Doc A/HRC/24/11, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/152/42/PDF/G1315242.pdf?OpenElement>>.

<sup>107</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review: Canada*, adopted 11 July 2018, UN Doc A/HRC/39/11, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/210/82/PDF/G1821082.pdf?OpenElement>> [2018 UPR Report of the Working Group].

<sup>108</sup> 2018 UPR Report of the Working Group, *ibid*.

46. In April 2018, the UN Special Rapporteur on Violence against women, Dubravka Simonovic, called on Canada to implement a comprehensive National Action Plan designed specifically to address violence against Indigenous women and girls.<sup>109</sup>

47. This is a remarkable, and disturbing, record. That Canada is in the midst of a human rights crisis of violence against Indigenous women and girls has been recognized by all human rights bodies, international and regional, that review Canada's compliance with its obligations under international human rights law. That Canada's responses are woefully inadequate, given the scope and severity of the crisis, has also been universally recognized. Since 2005, and with growing urgency, human rights experts, UN and Inter-American bodies, and the member countries of the UN, have called for more – specifically, they have called for coordinated, strategic, national responses to the social and economic disadvantages and deprivations of Indigenous women and girls, and to police and justice system failures. While governments in Canada claim that they are addressing the crisis of violence against Indigenous women and girls, their efforts are piecemeal, uncoordinated, and inadequate. Governments in Canada, at all levels, have chosen to keep in place laws, policies, and practices that perpetuate the violence. Repeatedly, they choose to take steps that are easy or inexpensive and fail to implement the recommendations made to them by human rights experts, Indigenous women, human rights and civil society organizations that would most improve the lives of Indigenous women.<sup>110</sup> The record is of long-standing failures by governments in Canada to live up to their human rights obligations to Indigenous women and girls, despite knowledge of the causes and consequences of the violence.

48. Following are accounts of crucial failures of governments in Canada to implement the rights of Indigenous women and girls. Due to space limitations, these accounts are not comprehensive; many issues that are crucial will be documented by others.

## Failures to Implement the Rights of Indigenous Women and Girls

### 1) Indian Act Sex Discrimination<sup>111</sup>

49. In its 2014 report on *Missing and Murdered Indigenous Women in British Columbia, Canada*, the IACHR found that historical *Indian Act* sex discrimination is a root cause of high levels of

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<sup>109</sup> UN Office of the High Commissioner for Human Rights, News Release, “End of mission statement by Dubravka Šimonović, United Nations Special Rapporteur on Violence against women, its causes and consequences - Official visit to Canada” (23 April 2018), online:

<<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22981>

<sup>110</sup> Canada's Auditor General reported a similar pattern with respect to her recommendations regarding the Government of Canada's treatment of Indigenous peoples. Despite her numerous recommendations, made year after year, the Government of Canada has failed to implement the recommendations that would most improve the lives of First Nations.

<sup>111</sup> See FAFIA, “Equal Status for Indigenous Women: the *Indian Act* and Bill S-3” (October 2017), online: <<http://fafia-afai.org/wp-content/uploads/2017/10/Equal-Status-for-Women-in-the-Indian-Act-2.pdf>>.

violence against First Nations women.<sup>112</sup> The United Nations CEDAW Committee in its inquiry under Article 8 of the Optional Protocol found that the *Indian Act* has mandated and enforced gender-based discrimination and inequality for First Nations women for more than one hundred years.<sup>113</sup> The CEDAW Committee recommended that sex discrimination be eliminated from the *Indian Act* as an essential step in addressing the murders and disappearances.<sup>114</sup>

#### a. History of Discrimination

50. Since its inception, the *Indian Act* has accorded privileged forms of Indian status to Indian men and their descendants compared to Indian women and their descendants, treating the latter as second-class Indians. In earlier versions of the *Indian Act*, an Indian was defined as 'a male Indian, the wife of a male Indian, or the child of a male Indian.' For the most part from 1876 to 1985, Indian women had no ability, or limited ability, to transmit status to their descendants. There was a one-parent rule for transmitting status and that parent was male. Indian women lost status when they married a non-Indian. On the other hand, Indian men who married non-Indians kept their Indian status and endowed status on their non-Indian wives.<sup>115</sup>

51. The Government of Canada has amended the *Indian Act* three times, in 1985, 2010, and 2017, ostensibly to remove the sex discrimination from the status registration provisions, each time doing it only partially.

52. In 1985, the Government of Canada enacted Bill C-31,<sup>116</sup> in response to the 1981 UN decision in *Lovelace v. Canada*<sup>117</sup> and to the introduction of Canada's new constitutional equality rights

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<sup>112</sup> IACHR Report 2014, at paras 93 & 129.

<sup>113</sup> CEDAW Report 2015, at para 24.

<sup>114</sup> CEDAW Report 2015, at para 219(e). The Committee calls upon Canada: "To amend the Indian Act to eliminate discrimination against women with respect to the transmission of Indian status, and in particular to ensure that aboriginal women enjoy the same rights as men to transmit status to children and grandchildren, regardless of whether their aboriginal ancestor is a woman, and remove administrative impediments to ensure effective registration as a status Indian for aboriginal women and their children, regardless of whether or not the father has recognized the child."

<sup>115</sup> Royal Commission on Aboriginal Peoples, *Volume I: Looking Forward, Looking Back* (Ottawa: Communication Group, 1996), at 251-262, online: <[https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP1\\_combined.pdf?sequence=5&isAllowed=y](https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP1_combined.pdf?sequence=5&isAllowed=y)>; *Volume 4: Perspectives and Realities*, at 20-43, online: <[https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP4\\_combined.pdf?sequence=2&isAllowed=y](https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP4_combined.pdf?sequence=2&isAllowed=y)>.

<sup>116</sup> Bill C-31, *An Act to amend the Indian Act*, 1st Sess, 33rd Parl, 1985, c 27. Bill C-31 was enacted as *Indian Act*, RSC 1985, c I-5.

<sup>117</sup> HRC, Communication No R.6/24, *Sandra Lovelace v Canada*, 36 UN GAOR Supp (No 40) at 166, UN Doc A/36/40 (1981), online: <<http://hrlibrary.umn.edu/undocs/session36/6-24.htm>> [*Lovelace*].

guarantee, section 15 of the *Charter*. The promise made by the Government of Canada was to eliminate all of the sex discrimination.<sup>118</sup>

53. Instead, Bill C-31 entrenched inequality by creating the category of 6(1)(a) for all those (mostly male) Indians and their descendants who already had full status prior to April 17, 1985, and the lesser category of 6(1)(c) for women whose status had been denied, or whose status had been removed because of marriage to a non-Indian. The women were considered "re-instatees", and they were re-instated to a lesser category of status. Their ability to transmit Indian status to their children was restricted by their 6(1)(c) status.

54. For the first time, Bill C-31 introduced a second generation cut-off, but delayed its application to those born prior to April 17, 1985 who had 6(1)(a) status; the second generation cut-off applied immediately to 6(1)(c) women. In other words, the "re-instated" women could pass status to their children, but not to the next generations, while their male counterparts could pass status to all their descendants born prior to April 17, 1985. The children of 6(1)(c) women were consigned to inferior 6(2) status, which is non-transmissible.

55. The 1985 consignment of First Nations women to 6(1)(c) status treated them as lesser parents, and denied them the legitimacy and social standing associated with full s. 6(1)(a) status. Throughout the years, the so-called "Bill C-31 women" have been treated as though they are not truly Indian, or 'not Indian enough,' less entitled to enjoy Indigenous rights, and obliged to fight continually for recognition by male Indigenous leadership, their families, communities, and broader society. As a result, many women have faced painful forms of discrimination as they are branded as 'traitors' for having married out – a burden their male counterparts do not carry. In many communities, registration under section 6(1)(c) is like a 'scarlet letter' – a declaration to other community members that they are outcasts, lesser Indians. Similarly, the 6(2) status which was given to the children of "Bill C-31 women" is a lesser form of Indian status, and it tells the community that these are the children of Indian women who married out, or who had children out of wedlock. The profound hurt that has been caused and the injustice that has been suffered by the women who are often referred to pejoratively as "6(1)(c) women" or "Bill C-31 women" has been neither recognized nor remedied.

56. The exclusion from status has also affected the ability of First Nations women and their children to access federal programs and services intended for registered Indians, such as post-secondary education, and uninsured health benefits. Their exclusion from status, or the category of their status, may also mean a denial of Band membership and related benefits, including ability to live on reserve with their families and communities, access to K-12 education on reserve, housing, training and cultural programs.<sup>119</sup> It further denies their political voice as they can neither run, nor vote, for leadership positions. Most of all it denies their Indigenous identity,

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<sup>118</sup> Minutes of Proceedings and Evidence of the Standing Committee on Legal and Constitutional Affairs, 1st Sess, 33rd Parl (7 March 1985), at 12:7–12:9 (David Crombie, Minister of Indian Affairs and Northern Development).

<sup>119</sup> Pamela Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Vancouver: UBC Press, 2011).

divides families and creates a significant barrier to accessing elders, language speakers and community ceremonies.

57. Since the 1970s, First Nations women and their descendants have launched legal challenges and petitions to UN treaty bodies<sup>120</sup> in order to unwind this discriminatory, sex-based hierarchy and its effects. However, in response, the Government of Canada has made only piecemeal reforms and never completely eliminating the discrimination.

58. In 2010, in response to the B.C. Court of Appeal *Mclvor v. Canada* decision, the Government of Canada passed Bill C-3, *Gender Equity in Indian Registration Act*,<sup>121</sup> and in December 2017, the Government of Canada passed another amendment, *Bill S-3 An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*.<sup>122</sup> In both cases, the amendments removed the specific form of sex discrimination in the status registration provisions that was identified by the courts but left the core of it in place.

59. Bill C-3 was expected to entitle about 45,000 new registrants,<sup>123</sup> and Bill S-3 is expected to entitle between 28,000 and 35,000 new registrants.<sup>124</sup> However, the Parliamentary Budget Officer estimates that there are approximately 270,000 First Nations women and their descendants who are still excluded and could register for Indian status if the sex discrimination were completely eliminated.<sup>125</sup> Thus, the majority of those who should be registered are still excluded due to gender discrimination.

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<sup>120</sup> *Canada (AG) v Lavell*, [1974] SCR 1349; *Lovelace*; *Mclvor v Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153; *Mclvor v Canada (Registrar, Indian and Northern Affairs)*, 2007 BCSC 827; *Matson v Canada (Indian Affairs and Northern Development)*, [2013] CHRT No 13; *Canada (Canadian Human Rights Commission) v Canada (Indian and Northern Affairs)*, [2015] FCJ No 400; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31; *Lynn Gehl v Attorney General of Canada*, 2015 ONSC 3481 (CanLII); *Descheneaux c Canada (Procureur Général)*, 2015 QCCS 3555. Sharon Mclvor and Jeremy Matson have outstanding petitions filed with the United Nations Human Rights Committee (*Sharon Mclvor and Jacob Grismer v Canada*, online: <<https://povertyandhumanrights.org/2011/08/mcivor-v-canada/>>) and the Committee on the Elimination of Discrimination against Women (*Matson v Canada*, Petition No 68/2014) because of the continuing discrimination.

<sup>121</sup> Bill C-3, *Gender Equity in Indian Registration Act*, 3rd Sess, 40th Parl, 2010 (received royal assent on 15 December 2010); *Gender Equity in Indian Registration Act*, SC 2010, c 18.

<sup>122</sup> Government of Canada, “Plain test description of Bill S-3, An Act to amend the Indian Act in response to Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)” (31 January 2018), online: <<https://www.aadnc-aandc.gc.ca/eng/1478177979520/1478178031024>>.

<sup>123</sup> Indigenous and Northern Affairs Canada, “Registration Process for Bill C-3 Applicants”, Government of Canada <[www.aadnc-aandc.gc.ca](http://www.aadnc-aandc.gc.ca)>.

<sup>124</sup> Dr. Pamela Palmater, Presentation to the Parliamentary Committee on Indigenous and Northern Affairs Re: Bill S-3. December 5, 2016, online: <<http://www.pampalmater.com/wp-content/uploads/2016/12/Presentation-to-Parliamentary-Standing-Committee-on-Indigenous-and-Northern-Affairs-Dec-5-2016.pdf>>.

<sup>125</sup> Parliamentary Budget Officer, “Bill S-3: Addressing Sex-Based Inequities in the Indian Act,” (Ottawa: Office of the Parliamentary Budget Officer, 5 December 2017), online: <[http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3\\_EN.pdf](http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3_EN.pdf)>.

60. The effect of maintaining the 6(1)(a) - 6(1)(c) hierarchy is that, to this day, Indian women and their descendants are still being denied equal status with Indian men and their descendants because the scheme treats the female line as inferior and affords their descendants lesser or no status. Under the current law, Indian women like Sharon McIvor can never have full 6(1)(a) Indian status like their male counterparts.

#### b. 6(1)(a) All the Way

61. In June 2017, when Bill S-3 was in Parliament, the Senate of Canada amended it in a way that would have eliminated the sex discrimination, fully and finally, from the *Indian Act*. That amendment was dubbed the '6(1)(a) all the way' amendment because it would have entitled Indian women and their descendants born prior to 1985 to full 6(1)(a) status on the same footing as Indian men and their descendants.

62. The Government of Canada refused to support this amendment. However, since Senate approval was still required, in October 2017, the Government of Canada agreed to include provisions that will have the same effect as the Senate's '6(1)(a) all the way' amendment (ss. 2.1, 3.1 and 3.2). However, these provisions **do not come into force until an unspecified date** when the Government may decide, by Order-in-Council, to enact them.<sup>126</sup> The bottom line is that the bulk of the sex discrimination remains and **there is no fixed date for its removal**.

63. The Government of Canada's principal justification for this failure to eliminate the sex discrimination from the *Indian Act* is that it must consult with Indigenous communities and leaders before doing so. Canada has consulted about the removal of sex discrimination from the *Indian Act* repeatedly over the last forty years, including before and after passing Bill C-31 in 1985, and before and after passing Bill C-3 in 2010. The duty to consult is perverted when it is used as an excuse to delay the elimination of the Government's own more-than-a-century-old sex discrimination against First Nations women and their descendants.

64. Unfortunately, the Government of Canada, in its history of consultations on the elimination of sex discrimination from the *Indian Act* has pitted the right of Indigenous communities to self-determination against Indigenous women's right to equality, encouraging and permitting male-led Indigenous organizations and some band councils to oppose equality for Indigenous women on the grounds that self-government should be established first,<sup>127</sup> or that they do not have

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<sup>126</sup> Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, 1st Sess, 42nd Parl, 2017, s 15(2) (assented to 12 December 2017).

<sup>127</sup> Gerard Hartley, "The Search for Consensus: A Legislative History of Bill C-31, 1969–1985" (2007) Aboriginal Policy Research Consortium International (APRCi) 5 at 12, online: <<https://ir.lib.uwo.ca/cgi/viewcontent.cgi?referer=https://www.google.ca/&httpsredir=1&article=1346&context=aprci>>. Hartley describes how AFN's National Chief David Ahenakew argued that the Indian Act should not be amended before the constitutional entrenchment of the right to self-government: "First we have to secure our right place in Canada, the rights of our First Nations. Then we would deal with the discrimination against women..." Jane Gottfriedson, then President of NWAC, replied "Aboriginal women's rights must not be kept in abeyance while Indian leaders and federal and provincial governments sort out the meaning of Aboriginal constitutional rights." Hartley explains: "The NWAC supported Aboriginal self-government, Gottfriedson asserted,

adequate resources to incorporate new band members.<sup>128</sup> Resources matter, but cannot be determinative.<sup>129</sup> Canada has an obligation to respect and implement both the right to self-determination and women's rights to equality and non-discrimination,<sup>130</sup> which should be treated as mutually supportive rather than mutually exclusive.

65. Canada is blatantly violating domestic and international norms of equality and non-discrimination.<sup>131</sup> Canada is also violating Article 8 of UNDRIP by engaging in a practice of forced assimilation. For more than one hundred years, the Government of Canada has used the sex discrimination in the *Indian Act* as a tool of assimilation, and a means of diminishing the pool of status Indians to whom it owes a fiduciary duty.

66. The violence will not stop until Indigenous women and girls are treated as equal human beings. Removing this discrimination from the *Indian Act* is a minimum threshold requirement for ending violence.

***“The Indian Act has mandated inequality for First Nations women for more than one hundred years.”***

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but ‘if Indian women suffer under federal discriminatory legislation for another five or twenty years while you hash out the meaning of Indian government, we will not accept this.’” Thirty-six years later little has changed.

<sup>128</sup> Naomi Metallic, at Part III, Volume V, p. 161, line 10 - p. 163, line 6 appears to give credence to the argument that legal equality for Indian women can be delayed while the federal government discusses resources and longer-term plans for eliminating the Indian Act. This position is not consonant with the human rights of Indigenous women.

<sup>129</sup> *Reference re Remuneration of Judges of the Provincial Court of PEI*, [1997] 3 SCR 3 at para 283.

<sup>130</sup> Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas*, OEA/Ser.L/V/II, Doc 44/17, 17 April 2017, at para 59, online: <<https://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>> [IACHR Report 2017], citing UNHRC Corpuz Report 2015, para 75.

<sup>131</sup> HRC, Concluding observations 2006, *supra*; HRC, Concluding observations 2015, at paras 17-18; Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights*, 36th Sess, adopted 22 May 2006, UN Doc E/C.12/CAN/CO/4-5, online: <<https://undocs.org/E/C.12/CAN/CO/5>> [CESCR, Concluding observations 2006]; CESCR, Concluding observations 2016, at para 22(b); CERD, Concluding observations 2007, *supra* at para 15; Committee on the Elimination of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination against Women*, 28th & 29th Sess, UN Doc A/58/38 (2003), online: <[http://undocs.org/A/58/38\(SUPP\)](http://undocs.org/A/58/38(SUPP))>; CEDAW, Concluding observations 2008, *supra*; CEDAW, Concluding observations 2016, *supra* at para 13.



## 2) Social and Economic Conditions

67. Indigenous women and girls experience the highest rates of poverty in Canada. They experience inadequate and overcrowded housing, homelessness, and lack of access to food and safe drinking water at rates much higher than the Canadian population and grossly disproportionate to Canada's wealth. Conditions of poverty also increase the challenges faced by Indigenous women and girls with physical and mental disabilities or illnesses.

Due to the deeply-rooted discrimination against Indigenous women in Canada, and their marginalization, their socio-economic inequality causes, and exacerbates, violence against them.

68. A shocking 1 in 4 Indigenous children live in poverty. More than 60% of First Nations children living on reserves live in poverty, but in provinces like Manitoba, that number jumps to a staggering 76%.<sup>132</sup> Instead of improving, the poverty rates for these children grew worse between 2005 and 2010.<sup>133</sup> The poverty of children is directly related to the poverty of their mothers and families – 29% of Indigenous children live in homes headed by single Indigenous mothers (double the Canadian rate of 14%)<sup>134</sup> and single mothers are highly likely to be poor. Indigenous women living off-reserves have high rates (36%) of poverty.<sup>135</sup> Inuit women are acutely impacted by poverty as 70% of households do not have enough food to eat and the majority live in sub-standard, over-crowded housing.<sup>136</sup> Indigenous women and girls with disabilities also suffer from higher rates of poverty.<sup>137</sup>

69. For Indigenous women and girls, the conditions of poverty are severe and include the following:

### a. Water and Food

70. More than 73% of all water systems and 64% of wastewater systems on reserves are at medium to high risk;<sup>138</sup> and some reserves have been under boil water advisories for over 10

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<sup>132</sup> Canadian Centre for Policy Alternatives, "Shameful Neglect: Indigenous Child Poverty in Canada," by David Macdonald & Daniel Wilson (Ottawa: Canadian Centre for Policy Alternatives, May 2016), online: <[https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous\\_Child%20\\_Poverty.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous_Child%20_Poverty.pdf)> [CCPA, Shameful Neglect].

<sup>133</sup> CCPA, Shameful Neglect.

<sup>134</sup> Aboriginal Women in Canada, at 26; CCPA, Shameful Neglect.

<sup>135</sup> Canadian Women's Foundation, "Fact Sheet: Women and Poverty in Canada" (September 2015), online: <<https://www.canadianwomen.org/wp-content/uploads/2018/09/Fact-Sheet-WOMEN-POVERTY-September-2018.pdf>>.

<sup>136</sup> Inuit Tapiriit Kanatami, "Inuit Perspectives on a Canadian Poverty Reduction Strategy" (22 January 2018) at 14, online: <[https://www.itk.ca/wp-content/uploads/2018/08/ITK-Submission-on-CPRS\\_Final\\_Jan2018.pdf](https://www.itk.ca/wp-content/uploads/2018/08/ITK-Submission-on-CPRS_Final_Jan2018.pdf)>.

<sup>137</sup> International Disability Alliance, IDA Submission on Indigenous women and girls with disabilities (2013), online: <<http://www.internationaldisabilityalliance.org/resources/indigenous-women-and-girls-disabilities-crpdc-committee-discussion>> [IDA Submission].

<sup>138</sup> Neegan Burnside, "National Assessment of First Nations Water and Wastewater Systems: National Roll-Up Report" (April 2011) at ii, online: <<https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte->

years.<sup>139</sup> In May 2018, there were 174 drinking water advisories in First Nations communities.<sup>140</sup> Approximately 28.2% of Indigenous households report food insecurity compared to 12.6 for Canadians.<sup>141</sup>

## b. Housing

71. Many Indigenous peoples in Canada live in deplorable housing conditions in the country. More than 28% of First Nations people live in over-crowded housing; 43% of First Nation homes are in need of major repair;<sup>142</sup> and there is a deficit of 110,000 homes on First Nations reserves.<sup>143</sup> For Inuit women, the lack of adequate housing is extreme, with overcrowding, people sleeping in shifts, and no shelters or alternative housing to escape to when there is violence. Indigenous women outnumber Indigenous men in urban areas.<sup>144</sup> This may result from the fact that discrimination and violence can prevent Indigenous women from securing adequate housing on-reserve or in their communities; if they leave, they face discrimination by landlords that makes it difficult to access and maintain decent housing.<sup>145</sup>

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text/enr\_wtr\_nawws\_rurnat\_rurnat\_1313761126676\_eng.pdf> (prepared for Department of Indian and Northern Affairs Canada).

<sup>139</sup> Human Rights Watch, “Make It Safe: Canada’s Obligation to End the First Nations Water Crisis” (June 2016) at 29-39, online: <[https://www.hrw.org/sites/default/files/report\\_pdf/canada0616web.pdf](https://www.hrw.org/sites/default/files/report_pdf/canada0616web.pdf)>.

<sup>140</sup> Canadian Centre for Policy Alternatives, “No Time to Lose: Alternative Federal Budget 2019” (2018) at 7, online: <<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2018/09/AFB%202019.pdf>>.

<sup>141</sup> Aboriginal Children in Care Working Group, “Aboriginal Children in Care: Report to Canada’s Premiers” (July 2015) at 47, online: <<https://fncaringsociety.com/sites/default/files/Indigenous%20Children%20in%20Care%20Report%20%28July%202015%29.pdf>>.

<sup>142</sup> Statistics Canada, “Aboriginal peoples: Fact sheet for Canada,” by Karen Kelly-Scott & Kristina Smith, Catalogue No 89-656-X2015001 (Ottawa: Statistics Canada, 3 November 2015) at 4, online: <<http://www.statcan.gc.ca/pub/89-656-x/89-656-x2015001-eng.pdf>>.

<sup>143</sup> Assembly of First Nations, “National First Nations Housing Strategy” (2010) at 1, online: <[http://www.afn.ca/uploads/files/housing/afn\\_national\\_housing\\_strategy.pdf](http://www.afn.ca/uploads/files/housing/afn_national_housing_strategy.pdf)>.

<sup>144</sup> Yale D. Belanger, Gabrielle Weasel Head & Olu Awosoga, “Housing and Aboriginal People in Urban Centres: A Quantitative Evaluation” (2012) 2:1 aboriginal policy studies 4, online: <<https://homelesshub.ca/sites/default/files/Belanger%20-%20APS%20Urban%20Abor%20Housing.pdf>>.

<sup>145</sup> Native Women’s Association of Canada, “Background Document on Aboriginal Women and Housing” (November 2004), online: <<https://www.nwac.ca/wp-content/uploads/2015/05/2004-Aboriginal-Women-and-Housing-Canada-Aboriginal-Peoples-Roundtable-Background.pdf>> (for the Canada-Aboriginal Peoples Roundtable Sectoral Follow-up Session on Housing).

### c. Homelessness

72. Indigenous people make up between 20 and 90% of those who are homeless, depending on the geographical area. This creates a significant safety risk for Indigenous women and children.<sup>146</sup> In urban areas, 28-34% of the shelter population is Indigenous.<sup>147</sup> Surveys have suggested this number is as high as 96% in some urban shelters.<sup>148</sup> There is also a severe lack of accessibility to emergency shelters and transitional housing for Indigenous women and girls trying to escape domestic violence, human traffickers and/or gangs.

### d. Health

73. The life expectancy for Indigenous people is currently eight years less than non-Indigenous Canadians.<sup>149</sup> Further, the gap in life expectancy is projected to increase in the coming years to 15 years.<sup>150</sup> While First Nations have higher rates of mortality than Canadians, Indigenous women and girls have worse outcomes; Indigenous girls have the highest rates of mortality – 6 times the national rates. Indigenous peoples suffer from higher rates of chronic and infectious diseases, injuries, substance abuse and mental health issues generally.<sup>151</sup> Rates of heart disease and stroke have declined in Canada, but they continue to increase for Indigenous people<sup>152</sup> - especially Indigenous women.<sup>153</sup>

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<sup>146</sup> Caryl Patrick, *Aboriginal Homelessness in Canada: A Literature Review*, Homeless Hub Paper No 6 (Toronto: Canadian Homelessness Research Network Press, 2014) at 19, online: <<https://www.homelesshub.ca/sites/default/files/AboriginalLiteratureReview.pdf>>.

<sup>147</sup> Ryan C. Walker, “Engaging the Urban Aboriginal Population in Low-Cost Housing Initiatives: Lessons from Winnipeg” (2003) 12:1 *Can J Urban Research* 99, online: <<http://homelesshub.ca/resource/engaging-urban-Indigenous-population-low-cost-housing-initiatives-lessons-winnipeg>>. Recent research has shown that Indigenous homelessness is increasing rapidly, particularly in urban settings (Belanger, Awosoga & Weasel Head, 2013), and that 28-34% of the shelter population is Indigenous (EDSC, 2016).

<sup>148</sup> Yale D. Belanger, Gabrielle Weasel Head & Olu Awosoga, “Assessing Urban Aboriginal Housing and Homelessness in Canada” (2012), online: <<https://www.homelesshub.ca/resource/assessing-urban-aboriginal-housing-and-homelessness-canada>>.

<sup>149</sup> Office of the Auditor General of Canada, “Report 4: Access to Health Services for Remote First Nations Communities,” 2015 Spring Reports of the Auditor General of Canada (April 2015) at 2, online: <[http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201504\\_04\\_e\\_40350.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201504_04_e_40350.html)>.

<sup>150</sup> Statistics Canada, “Life expectancy,” *Aboriginal Statistics at a Glance*, 2nd ed, Catalogue No 89-645-X (Ottawa: Statistics Canada, 2015), online: <<http://www.statcan.gc.ca/pub/89-645-x/2010001/life-expectancy-esperance-vie-eng.htm>> [Life expectancy].

<sup>151</sup> Life expectancy; Heart and Stroke Foundation, “Aboriginal Peoples, Heart Disease and Stroke: Position Statement” (2010) at 1, online: <<http://www.heartandstroke.com/atf/cf/%7B99452D8B-E7F1-4BD6-A57D-B136CE6C95BF%7D/Aboriginal-Eng-FINAL.pdf>> [Heart and Stroke].

<sup>152</sup> Heart and Stroke, at 3.

<sup>153</sup> Heart and Stroke Foundation of Canada, “Women, Heart Disease and Stroke in Canada: Issues and Options” (1997) at 1, online: <<http://data.library.utoronto.ca/datapub/codebooks/utm/canheart/CHH/womanhrt.pdf>>.

## e. Education

74. The gap in education levels between Indigenous peoples and non-Indigenous people is widening as opposed to closing, and in 2004 it was already calculated that it would take at least 28 years to close the gap.<sup>154</sup> Currently, there are more than 9,500 Indigenous peoples on a waiting list to obtain post-secondary education<sup>155</sup> and the number of Indigenous people funded for post-secondary education has decreased by 18.3% since 1997.<sup>156</sup> Education is a core determinant for secure and adequate income, but, at the current rate, it will take 63 years to close the income gap between Indigenous peoples and Canadians.<sup>157</sup>

## f. Suicide

75. First Nation suicide rates are 2-6 times higher than those of Canadians and Inuit rates are 10 times higher.<sup>158</sup> A shocking 38% of all Indigenous youth deaths are from suicide.<sup>159</sup> Indigenous women have higher rates of suicide attempts overall;<sup>160</sup> and women who have had their children taken into foster care also have “significantly higher rates of suicide attempts and completions.”<sup>161</sup> Some First Nations in Canada have the highest suicide rates in the world;<sup>162</sup> and suicide rates are

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<sup>154</sup> Don Drummond & Ellen Rosenbluth, “The Debate on First Nations Education Funding: Mind the Gap,” Working Paper No 49 (Kingston: School of Policy Studies, Queen’s University, December 2013) at 2, online: <[https://qspace.library.queensu.ca/bitstream/handle/1974/14846/Drummond\\_et\\_al\\_2013\\_Debate\\_on\\_First\\_Nations.pdf?sequence=1](https://qspace.library.queensu.ca/bitstream/handle/1974/14846/Drummond_et_al_2013_Debate_on_First_Nations.pdf?sequence=1)>.

<sup>155</sup> Office of the Auditor General of Canada, “Chapter 5: Indian and Northern Affairs Canada – Education Program and Post-Secondary Student Support,” in *Report of the Auditor General of Canada to the House of Commons* (November 2004) at 20, online: <<http://www.oag-bvg.gc.ca/internet/docs/20041105ce.pdf>>.

<sup>156</sup> John Paul Tasker, “Cap leads to steep drop in First Nations students receiving post-secondary support,” *CBC News* (12 September 2016), online: <<http://www.cbc.ca/news/politics/first-nations-cap-higher-education-1.3753021>>.

<sup>157</sup> Canadian Centre for Policy Alternatives, “The Income Gap between Aboriginal Peoples and the Rest of Canada,” by Daniel Wilson & David Macdonald (Ottawa: Canadian Centre for Policy Alternatives, April 2010), online: <<https://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/Aboriginal%20Income%20Gap.pdf>>.

<sup>158</sup> Aboriginal Healing Foundation, *Suicide Among Aboriginal People in Canada*, by Laurence J. Kirmayer et al (Ottawa: Aboriginal Healing Foundation, 2007) at 14, online: <<http://www.douglas.qc.ca/uploads/File/2007-AHF-suicide.pdf>>.

<sup>159</sup> National Aboriginal Health Organization, “Backgrounder: Suicide Among Aboriginal People in Canada” (2008), online: <[http://www.naho.ca/media-releases/04\\_04\\_2008BG.pdf](http://www.naho.ca/media-releases/04_04_2008BG.pdf)>.

<sup>160</sup> Saman Khan, “Aboriginal Mental Health: The statistical reality,” in Sarah Hamid-Balma, ed, “Aboriginal People” (2008) 5:1 *Visions J* at 6, online: <[http://www.heretohelp.bc.ca/sites/default/files/visions\\_aboriginal\\_people.pdf](http://www.heretohelp.bc.ca/sites/default/files/visions_aboriginal_people.pdf)>.

<sup>161</sup> Elizabeth Wall-Wieler et al, “Suicide Attempts and Completions among Mothers Whose Children Were Taken into Care by Child Protection Services: A Cohort Study Using Linkable Administrative Data” (2017) 63:3 *Can J Psychiatry* 170, online: <<https://journals.sagepub.com/doi/abs/10.1177/0706743717741058>>.

<sup>162</sup> Martin Patriquin, “Canada: Home to Pikangikum, suicide capital of the world,” *Macleans*’s (30 March 2012), online: <<http://www.macleans.ca/news/canada/canada-home-to-the-suicide-capital-of-the-world/>>.

increasing.<sup>163</sup> It should be noted that Indigenous children in care also suffer from high rates of suicide.<sup>164</sup>

76. The crisis-level impoverishment of Indigenous women and girls is linked to historic and ongoing colonization and dispossession of First Nations from their lands and resources, and to ongoing breaches of their Aboriginal and treaty rights and title. Unlike Canadians, Indigenous women and girls have constitutionally-protected treaty rights to fully-funded education, healthcare and provisions like food, clothing and income supports.<sup>165</sup> First Nation treaty rights also include the right to engage in trade and earn a good living or moderate livelihood and to enjoy the same prosperity as the “white man”.<sup>166</sup> Treaty 6 specifically provides for relief in times of poverty.<sup>167</sup> In Treaties 1 and 2, the Treaty Commissioner promised that the Crown would provide through the treaties “a future of promise” so First Nations could “live in comfort” and “live and prosper and provide” for all their future generations to come.<sup>168</sup> Yet, despite many calls for assistance to the Crown to address the severe poverty which has followed devastating land and resource dispossession, aid has not come, especially in the case of Indigenous women and girls. Nor has the federal government provided guaranteed needs and rights-based income support - a treaty right that is now constitutionally protected equally between male and female Aboriginal peoples in section 35(4).<sup>169</sup> Ongoing breaches of the treaty rights to hunt, fish and gather also hampers the ability of Indigenous women and girls to provide for themselves.

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<sup>163</sup> Laura Eggertson, “Aboriginal youth suicide rises in Northern Ontario” (2015) 187:11 *Can Medical Assoc J* E335 at E335, online: <<http://www.cmaj.ca/content/187/11/E335.full.pdf+html>>.

<sup>164</sup> See e.g. Rhiannon Johnson, “‘I Just Want to Know What Happened’: Indigenous children are dying in Canada’s foster care system,” *Vice News* (4 May 2017), online: <[https://news.vice.com/en\\_ca/article/gyd9pq/indigenous-children-are-dying-in-canadas-foster-care-system](https://news.vice.com/en_ca/article/gyd9pq/indigenous-children-are-dying-in-canadas-foster-care-system)>; Erin Brohman, “Teen killed herself at foster home, mother wishes she hadn’t obeyed ‘their rules,’” *CBC News* (24 January 2018), online: <<https://www.cbc.ca/news/canada/manitoba/teen-suicide-foster-home-mother-1.4501229>>.

<sup>165</sup> Chiefs of Ontario, “Our Children Our Future Our Vision: First Nation Jurisdiction Over First Nation Education in Ontario”, online: <<http://education.chiefs-of-ontario.org/upload/documents/resources/jurisdiction/ourchildrenourfutureourvision-2012.pdf>>; Chiefs of Ontario, “Our Nations Our Future Our Vision: Transformative Change through First Nation Higher Education”, online: <<http://education.chiefs-of-ontario.org/upload/documents/17-08-09-our-nations-our-future-our-visi.pdf>>.

<sup>166</sup> *R v Marshall*, [1993] 3 SCR 456.

<sup>167</sup> Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions, signed August 23 and 28 and September 9, 1876; Treaty No 6 states: “That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agents or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.”

<sup>168</sup> Treaties 1 and 2 Between Her Majesty the Queen and the Chippewa and Cree Indians of Manitoba and Country Adjacent with Adhesions, signed August 3, 1871 and April 30, 1875.

<sup>169</sup> *Constitution Act, 1982*, *supra*, s. 35(4).

77. Former Special Rapporteur for Indigenous peoples James Anaya's report on Canada in 2014 concluded that: "It is difficult to reconcile Canada's well-developed legal framework and general prosperity with the human rights problems faced by Indigenous peoples in Canada that have reached crisis proportions in many respects."<sup>170</sup> Anaya went on to find that: "The most jarring manifestation of these human rights problems is the distressing socio-economic conditions of indigenous peoples in a highly developed country."<sup>171</sup> He further noted that Canada has not provided higher resources for social services for Indigenous peoples despite Canada's own Auditor General's conclusions that the lack of funding prevents improvement of living conditions.<sup>172</sup>

78. The CEDAW Committee noted in 2008 that Indigenous women and girls face multiple overlapping forms of discrimination resulting in severe poverty:

[A]boriginal women in Canada continue to live in impoverished conditions, which include high rates of poverty, poor health, inadequate housing, lack of access to clean water, low school-completion rates and high rates of violence. They are underrepresented in all areas of the labour market, in particular in senior or decision-making positions, have higher rates of unemployment and face a greater pay gap in terms of their hourly earnings compared with men [and...] are also exposed to a high level of violence and are significantly underrepresented in political and public life.<sup>173</sup>

79. This profound socio-economic inequality causes and exacerbates violence against Indigenous women and girls. It creates vulnerability to violence, exploitation and death. Throughout the testimony presented in the Inquiry, the themes of poverty, inadequate housing and hunger were identified as a cause of violence against Indigenous women, and a common thread weaving throughout experiences of discrimination and marginalization, including substance abuse, over-incarceration, health, interactions with child welfare agencies, and social inclusion. As was confirmed in the testimony of Tracy Denniston and Fay Blaney, "poverty is the key vulnerability for women" and "the welfare rate...all over the country...is unliveable....and [it] keeps women vulnerable to men's violence". Additionally, witnesses stated that "lack of security prevents women from leaving abusive men".<sup>174</sup> Poverty means that Indigenous women and girls who flee violence at home are forced to live on the streets, where they face more violence from gangs, pimps and traffickers. It is not surprising that many of the murdered and missing Indigenous women and girls were street involved. Indigenous women and girls are also subjected to vicious

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<sup>170</sup> UNHRC, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in Canada*, 27th Sess, adopted 4 July 2014, UN Doc A/HRC/27/52/Add.2, at para 14, online: <<http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>> [UNHRC SR Report 2014].

<sup>171</sup> UNHRC SR Report 2014, at para 15.

<sup>172</sup> UNHRC SR Report 2014, at para 16.

<sup>173</sup> CEDAW, Concluding observations 2008, at para 43.

<sup>174</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part III, Expert & Knowledge-Keeper Panel: Human Rights Framework, Part III, Vol 5 in Quebec City (May 15, 2018) at 69.

forms of violence around remote man-camps as a result of resource extraction operations.<sup>175</sup> Whether Indigenous women face violence from the state (policing and corrections, foster care), violence from the extractive industry<sup>176</sup> (man-camps) or violence in society (abusive men, pimps) – poverty diminishes their chances of avoiding it and jeopardizes their safety.

80. The socio-economic disadvantage experienced by Indigenous women is the direct result of laws, policies, and programs that fail to recognize an adequate standard of living as a human right and that fail to take a human rights approach, rooted in the realities of Indigenous women and girls, to addressing poverty, hunger, and homelessness. These conditions are further exacerbated for Indigenous women and girls with physical and mental disabilities.<sup>177</sup>

81. When so many Indigenous women are poor, adequate social assistance incomes are critical to their lives. Yet, despite decades of advocacy, welfare incomes continue to fall well below any measure of poverty used in Canada, and rates are 20% lower than in the past because they have not been adjusted for inflation.<sup>178</sup> Inadequate social assistance rates affect all Indigenous women, including First Nations women living on reserve. Even though their social assistance is delivered by the federal government or by their Band, rates and eligibility requirements are set to match the relevant provincial or territorial rates and requirements.

In particular, social assistance rates for lone-parent mothers ensure a life of abject poverty.<sup>179</sup> In some cases, the gap between welfare rates and the cost of living is so significant that women are

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<sup>175</sup> P. Palmater, “International Trade and the Corporate Re-colonization of Indigenous Lands and Bodies” in C. Walsh, W. Mignolo, eds., *Localizing Decoloniality in Global Indigenous Studies* (Durham, North Carolina: Duke University Press, 2019) [in press]; Amnesty International, *The Point of No Return, The Human Rights of Indigenous Peoples in Canada Threatened by the Site C Dam* (2016), online: <<https://www.amnesty.ca/sites/amnesty/files/Canada%20Site%20C%20Report.pdf>>; Levi Rickert, “UN Special Rapporteur: Oil, Gas & mining Operations brings increased Sexual Violence” (21 January 2014), online: <<http://nativenewsonline.net/currents/un-special-rapporteur-oil-gas-mining-operations-brings-increased-sexual-violence/>>.

<sup>176</sup> Brandi Morin, “Pipeline ‘man camps’ loom over BC’s Highway of Tears,” *National Observer* (21 September 2017), online: <<https://www.nationalobserver.com/2017/09/21/news/pipeline-man-camps-loom-over-bcs-highway-tears>>; Amnesty International, “The Point of No Return: The Human Rights of Indigenous Peoples in Canada Threatened by the Site C Dam” (2016), online: <<https://www.amnesty.ca/sites/amnesty/files/Canada%20Site%20C%20Report.pdf>>. See also Pamela D. Palmater, “International Trade and the Corporate Re-colonization of Indigenous Lands and Bodies” in C. Walsh & W. Mignolo, eds., *Localizing Decoloniality in Global Indigenous Studies* (Durham, North Carolina: Duke University Press) [accepted and in press].

<sup>177</sup> See IDA Submission, *supra*.

<sup>178</sup> National Council of Welfare, *Welfare Incomes 2009*, vol 129 (Ottawa: National Council of Welfare, Winter 2010) at viii, online: <[http://publications.gc.ca/collections/collection\\_2011/cnb-ncw/HS51-1-2009-eng.pdf](http://publications.gc.ca/collections/collection_2011/cnb-ncw/HS51-1-2009-eng.pdf)>.

<sup>179</sup> Caledon Institute of Social Policy, “Canada Social Report: Welfare in Canada, 2012, by Anne Tweddle, Ken Battle & Sherri Torjman (Ottawa: Caledon Institute of Social Policy, December 2013) at 53, online: <<http://www.caledoninst.org/Publications/PDF/1031ENG.pdf>>.

forced into situations where children may be apprehended.<sup>180</sup> This gap between incomes and costs can lead to a woman living rough or in an emergency shelter, and to her children being seized from her care.

82. The United Nation's CEDAW, CESCRC and CRPD Committees have recommended that Canada ensure social assistance rates meet an adequate standard.<sup>181</sup> This is essential to the safety of Indigenous women. In particular the CEDAW Committee recommended in 2008 that, through the Canada Social Transfer, the federal government establish minimum standards for the provision of funding to social assistance programs in all jurisdictions, and a monitoring mechanism to ensure that all governments make funding decisions that meet the needs of the most vulnerable groups of women, including single mothers and Indigenous women.<sup>182</sup>

83. In November 2017, the federal government released Canada's first National Housing Strategy,<sup>183</sup> and in November 2018, the federal government released its first Poverty Reduction Strategy.<sup>184</sup> While the National Housing Strategy promises a specific-Indigenous focused strategy to meet the housing needs of Indigenous people and communities, there are serious concerns about the effectiveness of the strategy for Indigenous women. Urgent action is needed now on housing for Indigenous women and their children, and particularly for Inuit women.<sup>185</sup> A movement of civil society organizations, under the "Legislate the Right to Housing" campaign, have presented a proposal to the government to ensure an individual claiming mechanism is created through a federal housing advocate, which would ensure that Indigenous women, who

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<sup>180</sup> For example, in Vancouver, British Columbia, a single mother with two children receives \$1135 per month, which includes \$660 for housing and \$475\$ for basic needs. Meanwhile, the current average rent for a two-bedroom apartment in Canada's most expensive city is \$1649 per month, almost three times as much as what is provided by social assistance for housing. All dollar figures are Canadian currency. See Government of British Columbia Ministry of Social Development & Poverty Reduction, "BC Employment & Assistance Rate Tables" (2017), online: <<https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables>> (see especially "Income Assistance Rate Table"); Canada Mortgage and Housing Corporation, "Rental Market Report: Canada Highlights," Housing Market Information (2018), at 4, online:

<<https://eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/cmhc/pubsandreports/rental-market-reports-canada-provincial-highlights/2018/rental-market-reports-canada-64667-2018-a01-en.pdf?sv=2017-07-29&ss=b&srt=sco&sp=r&se=2019-05-09T06:10:51Z&st=2018-03-11T22:10:51Z&spr=https,http&sig=0Ketq0sPGtnokWOe66BpqguDljVgBRH9wLOCg8HfE3w%3D>>.

<sup>181</sup> CEDAW Concluding observations 2016, at para 47; CESCRC Concluding observations 2015, at paras 29-30; CRPD Concluding observations, at para 50.

<sup>182</sup> CEDAW, Concluding observations 2008, at paras 13-14.

<sup>183</sup> National Housing Strategy, "Canada's National Housing Strategy: A place to call home" (2018), online: <<https://www.placetocallhome.ca/pdfs/Canada-National-Housing-Strategy.pdf>>.

<sup>184</sup> Employment and Social Development Canada, "Opportunity for All: Canada's First Poverty Reduction Strategy" (August 2018), online: <<https://www.canada.ca/en/employment-social-development/programs/poverty-reduction/reports/strategy.html>>.

<sup>185</sup> Graham Slaughter, "Housing experts and politicians divided over Liberals' \$40B affordable housing plan," *CTV News* (22 November 2017), online: <<https://www.ctvnews.ca/politics/housing-experts-and-politicians-divided-over-liberals-40b-affordable-housing-plan-1.3690199>>.



have for so long gone unanswered, have access to remedies when their right to housing is violated.

84. The Poverty Reduction Strategy does not appear to have any specific focus on Indigenous women and does not address the country's abysmal income assistance rates and the harms their inadequacy causes.

***"...profound socio-economic inequality creates vulnerability to violence, exploitation and death."***

85. There can no greater violence to Indigenous women and girls than the failure to uphold their right to an adequate standard of living,, causing conditions of poverty which are a root cause of disappearances and deaths. Radical and targeted intervention is needed to change these conditions. As a fundamental

element of the national action plan which is the central recommendation of this submission, there must be a targeted and comprehensive strategy for addressing the social and economic disadvantages of Indigenous women that is proportionate to the severity of the conditions of poverty and its consequences – taking into account the significant differences between First Nations women living on and off-reserve, Métis, and Inuit women– and reflecting the guarantee in Article 21 of UNDRIP of "effective measures and, where appropriate, special measures, to ensure continuing improvement of their economic and social conditions."

### 3) Child Welfare and Child and Family Services

86. Governments in all jurisdictions in Canada have created a crisis in child welfare by apprehending the children of Indigenous women at alarming rates. While Indigenous children are only 7% of the youth population in Canada, they represent more than 50% of all children in foster care.<sup>186</sup> However, the rate in Manitoba is an alarming 90% with one newborn baby taken from its mother every single day.<sup>187</sup> In the province of Saskatchewan the rate is 70% with no signs

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<sup>186</sup>Statistics Canada, First Nations People, Métis and Inuit in Canada: Diverse and Growing Populations, March 20, 2018, online: < <https://www150.statcan.gc.ca/n1/pub/89-659-x/89-659-x2018001-eng.htm>>

<sup>187</sup> *Ibid*; See also: "'CFS seizes a Manitoba newborn a day, First Nations advocate says", CBC News (1 September 2015), online: < <https://www.cbc.ca/news/canada/manitoba/cfs-seizes-a-manitoba-newborn-a-day-first-nations-advocate-says-1.3211451>>.

of slowing down.<sup>188</sup> Removals of Indigenous children from their families are occurring at a higher rate than during the period of residential schools.<sup>189</sup>

87. Children in foster care experience sexual and physical abuse,<sup>190</sup> and high rates of suicide.<sup>191</sup> Foster care is a direct pipeline to youth corrections, increased risks of sexual exploitation and human trafficking, and sexualized violence in general. Indigenous women and girls make up 50% of all human trafficking victims<sup>192</sup> and the police have long recognized that human traffickers target foster children and group homes. Indigenous children in foster care are more likely to end up in youth corrections than they are to complete high school – a situation which greatly diminishes their life chances – through no fault of their own. Despite the crisis, governments have

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<sup>188</sup> Statistics Canada, *Insights on Canadian Society: Living arrangements of Aboriginal children aged 14 and under*, Catalogue no. 75-006-X (Ottawa: Statistics Canada, 2016) at 7, online: <<https://www150.statcan.gc.ca/n1/en/pub/75-006-x/2016001/article/14547-eng.pdf?st=AjOhyk1V>> [Statistics Canada, Living Arrangements of Aboriginal Children].

<sup>189</sup> Cindy Blackstock, “First Nations Child and Family Services: Restoring Peace and Harmony in First Nations Communities” in Kathleen Kufeldt & Brad McKenzie, eds, *Child Welfare: Connecting Research, Policy and Practice* (Waterloo: Wilfred Laurier University Press, 2003) at 331.

<sup>190</sup> See for example Rhiannon Johnson, “‘I just want to know what happened’”, *Vice News*, 4 May 2017, online: <[https://news.vice.com/en\\_ca/article/gyd9pq/indigenous-children-are-dying-in-canadas-foster-care-system](https://news.vice.com/en_ca/article/gyd9pq/indigenous-children-are-dying-in-canadas-foster-care-system)>; Erin Brohman, “Teen killed herself at foster home, mother wishes she hadn’t obeyed ‘their rules’”, *CBC*, 24 January 2018, online: <<https://www.cbc.ca/news/canada/manitoba/teen-suicide-foster-home-mother-1.4501229>>. The expert panel formed under the Office of the Chief Coroner of Ontario to investigate 12 deaths of children in care between 2014 and 2017 found that “the systems that were involved repeatedly failed in their collective responsibility to meet the fundamental needs of the young people,” including mental health supports. Eight of the 12 young people were Indigenous. See Office of the Chief Coroner of Ontario, *Safe with Intervention: The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements* (September 2018) at 2, online: <<https://www.provincialadvocate.on.ca/publications/external-reports/safe-with-intervention.pdf>>. Alberta’s Child and Youth Advocate reported that Indigenous young people accounted for 71.4% of the suicides between 2012 and 2017. Each of these young people was either in care, receiving intervention services, or received intervention services within two years of their death. See Office of the Child and Youth Advocate of Alberta, *Five Years of Investigations April 1, 2012-March 31, 2017* (January 2018) at 27, online: <[http://www.ocya.alberta.ca/wp-content/uploads/2014/08/OCYARpt\\_2018\\_Investigations\\_FiveYearSummary.pdf](http://www.ocya.alberta.ca/wp-content/uploads/2014/08/OCYARpt_2018_Investigations_FiveYearSummary.pdf)>. See also: First Nations Child and Family Caring Society of Canada, “Federal Funding for First Nations Child and Family Services (Information Sheet)” (6 January 2016, online: <<https://fncaringsociety.com/sites/default/files/Prov%20and%20Territory%20description.pdf>>. In her testimony in the National Inquiry, Cindy Blackstock affirmed that the lack of program implementation and funding for children in care leaves these children “highly predisposed to irremediable harm.” See National Inquiry into Missing and Murdered Indigenous Women and Girls, “Truth-Gathering Process – Parts II & III, Institutional & Expert/Knowledge-Keeper Hearings: “Child & Family Welfare,” 3 October 2018, online: [http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20181003\\_MMIWG\\_Winnipeg\\_Child\\_Family\\_Welfare\\_Parts\\_2\\_\\_3\\_Vol\\_12.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20181003_MMIWG_Winnipeg_Child_Family_Welfare_Parts_2__3_Vol_12.pdf) at 69.

<sup>191</sup> Martin Patriquin, “Canada, home to the suicide capital of the world”, *Maclean’s* (30 March 2012), online: <<http://www.macleans.ca/news/canada/canada-home-to-the-suicide-capital-of-the-world/>>.

<sup>192</sup> Jillian Taylor, “Human trafficking: Why aboriginal women are targeted”, *CBC News* (27 March 2014), online: <<https://www.cbc.ca/news/indigenous/human-trafficking-why-aboriginal-women-are-targeted-1.2589265>>.

failed to take the kind of actions that would reduce and eliminate Indigenous child apprehensions.

88. Little concern is given for the Indigenous mother in these situations. Indigenous women are far more likely to suffer from anxiety, depression and substance abuse when their children are apprehended.<sup>193</sup> Also women who have children in care are at risk of forced or coerced sterilizations because child and family services officials intimidate them into agreeing.<sup>194</sup> Child apprehensions not only limit the life chances of the children, but also of the Indigenous women from whom they are taken.

89. Governments in all jurisdictions maintain child welfare services and systems that discriminate against Indigenous women and girls by:

- removing thousands of children from Indigenous mothers, families and communities because of racism, poverty, lack of adequate housing, overcrowding, and witnessing violence;<sup>195</sup>

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<sup>193</sup> *First Nations Child and Family Caring Society of Canada v. Canada (Attorney General) (No. 15)*, 2016 CHRT 2 [FN Caring Society v Canada]. See also Cindy Blackstock, *First Nations Child and Family Caring Society of Canada: Federal Government Under-Funding of Children's Services on Reserves as a Risk Factor for Disadvantage Including Sexual Exploitation* (October 2009), online: <[https://fncaringociety.com/sites/default/files/docs/SenateCommitteeOnHumanRights\\_2009.pdf](https://fncaringociety.com/sites/default/files/docs/SenateCommitteeOnHumanRights_2009.pdf)> [Blackstock, *Federal Government Under-Funding*].

<sup>194</sup> *FN Caring Society v Canada*, *ibid.* See also, BC Representative for Children and Youth, *Delegated Aboriginal Agencies: How resourcing affects service delivery* (Victoria: RCYBC, 2017) at 4, online: <[https://rcybc.ca/sites/default/files/documents/pdf/reports\\_publications/rcy-daa-2017.pdf](https://rcybc.ca/sites/default/files/documents/pdf/reports_publications/rcy-daa-2017.pdf)> [RCYBC, *Delegated Aboriginal Services*]. In her testimony in the National Inquiry, Cora Morgan also made note of the funding structures incentivizing apprehension, and resulting in the “commodification of children.” See National Inquiry into Missing and Murdered Indigenous Women and Girls, “Truth-Gathering Process – Parts II & III, Institutional & Expert/Knowledge-Keeper Hearings: “Child & Family Welfare,”” (21 September 2018) at 57, online: <[http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20181001\\_MMIWG\\_Winnipeg\\_Child\\_Family\\_Welfare\\_Parts\\_2\\_\\_3\\_Vol\\_10.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20181001_MMIWG_Winnipeg_Child_Family_Welfare_Parts_2__3_Vol_10.pdf)> [National Inquiry, *Child & Family Welfare Transcripts*].

<sup>195</sup> Statistics Canada reports that in 2011, there were more than 14,000 Aboriginal children aged 14 and under in foster care. Aboriginal children accounted for 7% of all children in Canada but for almost one-half (48%) of all foster children. In Manitoba and Saskatchewan, at least 85% of foster children were Aboriginal children. See Statistics Canada, “Living arrangements of Aboriginal children aged 14 and under,” by Annie Turner, Catalogue No 75-006-X (Ottawa: Statistics Canada, 13 April 2016), online: <<https://www150.statcan.gc.ca/n1/en/pub/75-006-x/2016001/article/14547-eng.pdf?st=AjOhyk1V>>. In January 2018, CBC reported that First Nations, Inuit and Métis children under 14 make up 52.2% of all children in foster care. There are 4,300 First Nations children under the age of four in foster care across the country. In Manitoba, there are 10,000 children in care. See Jorge Barrera, “Behind the statistics: The story of 2 Indigenous children on the brink of becoming court wards,” *CBC News* (24 January 2018), online: <<https://www.cbc.ca/news/indigenous/ottawa-indigenous-child-foster-care-1.4502217>>; Jorge Barrera, “Indigenous child welfare rates creating ‘humanitarian crisis’ in Canada, says federal minister,” *CBC News* (2 November 2017), online: <<https://www.cbc.ca/news/indigenous/crisis-philpott-child-welfare-1.4385136>>. See also Ontario Human Rights Commission, “Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare” (February 2018) at 24-27, online: <[http://www.ohrc.on.ca/sites/default/files/Interrupted%20childhoods\\_Over-](http://www.ohrc.on.ca/sites/default/files/Interrupted%20childhoods_Over-)

- underfunding child welfare services on reserves;<sup>196</sup>
- using funding formulas that incentivize removing Indigenous children from their families;<sup>197</sup>
- failing to provide adequate prevention and supportive services to Indigenous mothers and families,<sup>198</sup> and to Indigenous children in care;<sup>199</sup>

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representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare\_accessible.pdf> [OHRC, Interrupted Childhoods]; Ontario Human Rights Commission, “Under suspicion: Research and consultation report on racial profiling in Ontario” (April 2017) at 53-56, online: <[http://ohrc.on.ca/sites/default/files/Under%20suspicion\\_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario\\_2017.pdf](http://ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf)> [OHRC, Under Suspicion].

<sup>196</sup> *First Nations Child and Family Caring Society of Canada v Canada (Attorney General) (No. 15)*, 2016 CHRT 2 [FN Caring Society v Canada]. See also Cindy Blackstock, “First Nations Child and Family Caring Society of Canada: Federal Government Under-Funding of Children’s Services on Reserves as a Risk Factor for Disadvantage Including Sexual Exploitation,” submitted to the Senate Committee on Human Rights (26 October 2009), online: <[https://fncaringsociety.com/sites/default/files/docs/SenateCommitteeOnHumanRights\\_2009.pdf](https://fncaringsociety.com/sites/default/files/docs/SenateCommitteeOnHumanRights_2009.pdf)> [Blackstock, Federal Government Under-Funding].

<sup>197</sup> *FN Caring Society v Canada*. See also BC Representative for Children and Youth, “Delegated Aboriginal Agencies: How resourcing affects service delivery” (March 2017) at 4, online: <[https://rcybc.ca/sites/default/files/documents/pdf/reports\\_publications/rcy-daa-2017.pdf](https://rcybc.ca/sites/default/files/documents/pdf/reports_publications/rcy-daa-2017.pdf)> [RCYBC, Delegated Aboriginal Agencies]. In her testimony in the National Inquiry, Cora Morgan also made note of the funding structures incentivizing apprehension and resulting in the “commodification of children.” See National Inquiry into Missing and Murdered Indigenous Women and Girls, “Child & Family Welfare,” Truth-Gathering Process, Mixed Parts II & III, vol X (21 September 2018) at 57, online: <[http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20181001\\_MMIWG\\_Winnipeg\\_Child\\_Family\\_Welfare\\_Parts\\_2\\_\\_3\\_Vol\\_10.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20181001_MMIWG_Winnipeg_Child_Family_Welfare_Parts_2__3_Vol_10.pdf)> [MMIWG Inquiry, Child & Family Welfare].

<sup>198</sup> RCYBC, *Delegated Aboriginal Agencies*, at 42; OHRC, *Interrupted Childhoods*, at 18-19; *Stolen Sisters*, at 10-11. In her testimony in the National Inquiry, Cora Morgan also observed that “[w]e have a funding model that is focused on the apprehension of children,” with the vast majority of funding dedicated to protection services as opposed to prevention services. See MMIWG Inquiry, *Child & Family Welfare*, at 55-56.

<sup>199</sup> The expert panel formed under the Office of the Chief Coroner of Ontario to investigate 12 deaths of children in care between 2014 and 2017 found that “the systems that were involved repeatedly failed in their collective responsibility to meet the fundamental needs of the young people,” including mental health supports. Eight of the 12 young people were Indigenous. See Office of the Chief Coroner of Ontario, “Safe with Intervention: The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements” (September 2018) at 2, online: <<https://www.provincialadvocate.on.ca/publications/external-reports/safe-with-intervention.pdf>>. See also First Nations Child and Family Caring Society of Canada, “Federal Funding for First Nations Child and Family Services: Funding Arrangements for Provinces and Territories,” Information Sheet (6 January 2016), online: <<https://fncaringsociety.com/sites/default/files/Prov%20and%20Territory%20description.pdf>>. In her testimony in the National Inquiry, Cindy Blackstock affirmed that the lack of program implementation and funding for children in care leaves these children “highly predisposed to irremediable harm.” See MMIWG Inquiry, *Child & Family Welfare*, at 69.

- providing higher rates of financial and other supports for foster parents (mostly non-Indigenous) than for Indigenous birth mothers, grandmothers, and other Indigenous extended family members and/or community members for care of Indigenous children;<sup>200</sup>
- apprehending babies at birth from Indigenous mothers instead of assisting them to care for their babies;<sup>201</sup>
- forcing, coercing and/or bullying Indigenous women into consenting to sterilization, by threatening to restrict their opportunities to see their apprehended children;<sup>202</sup>
- treating Indigenous mothers whose children have been taken into care in discriminatory, denigrating and disrespectful ways;<sup>203</sup>
- failing to protect Indigenous girls who are in state care from physical abuse and sexual abuse,<sup>204</sup> and from death;

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<sup>200</sup> For example, BC Child and Family Services pays foster parents \$803.81 per child 11 and under and \$909.95 per child 12 and over. A relative who takes care of a child receives \$554.27 per child age 11 and under and \$625.00 per child age 12 and over. See Foster Care Payments in BC, online: <<https://www2.gov.bc.ca/gov/content/family-social-supports/fostering/for-current-foster-parents/foster-care-payment>>; Extended Family Program (EFP), online: <<https://www2.gov.bc.ca/gov/content/family-social-supports/fostering/temporary-permanent-care-options/placement-with-a-person-other-than-the-parent>>.

<sup>201</sup> Justine Hunter, “Defending the Indigenous Newborns of BC,” *The Globe and Mail* (9 March 2018), online: <<https://www.theglobeandmail.com/news/british-columbia/defending-the-indigenous-newborns-of-british-columbia/article38268621/>>; Jeff Lagerquist, “Indigenous woman plans to give birth in secret over foster care fears,” *CTV News* (18 January 2018), online: <<https://www.ctvnews.ca/canada/indigenous-woman-plans-to-deliver-baby-in-secret-over-foster-care-fears-1.3766311>>.

<sup>202</sup> Indigenous women report that “social workers have encouraged or exerted pressure on pregnant women to agree to the procedure, sometimes with threats or inducements relating to custody and access to their older children, and the apprehension or access to their newborn child.” Maurice Law, Submission to UN Committee against Torture RE: Examination of Canada’s State Report, 65th Session, (15 October 2018) at 7, online: <[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CAN/INT\\_CAT\\_CSS\\_CAN\\_32800\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CAN/INT_CAT_CSS_CAN_32800_E.pdf)> (per Alisa R. Lombard, Associate). See also Saskatoon Regional Health Authority, “Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women,” by Yvonne Boyer & Judith Bartlett (22 July 2017), online: <[https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal\\_Ligation\\_intheSaskatoonHealthRegion\\_the\\_Lived\\_Experience\\_of\\_Aboriginal\\_Women\\_BoyerandBartlett\\_July\\_22\\_2017.pdf](https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf)>.

<sup>203</sup> Marlyn Bennett, “Jumping through Hoops: A Manitoba Study Examining Experiences and Reflections of Aboriginal Mothers Involved with Child Welfare in Manitoba” in S. McKay, D. Fuchs & I. Brown, eds, *Passion for action in child and family services: Voices from the prairies* (Regina: Canadian Plains Research Center, 2009) 69 at 83-87, online: <<http://cwrp.ca/sites/default/files/publications/prairiebook2009/Chapter4.pdf>>; Ontario Native Women’s Association, “Violence against Aboriginal Women and Child Welfare Connections: Paper and Annotated Bibliography,” by Melanie Jones and Tannis Smith (2011) at 8-9, online: <<http://www.onwa.ca/upload/documents/violence-against-women-and-child-welfare-paper.pdf>>.

<sup>204</sup> The BC Representative for Children and Youth reported that 61% of victims of sexualized violence in care were Indigenous girls. See BC Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care: An Aggregate Review* (October 2016) at 1, online: <<https://rcybc.ca/toomanyvictims>>; Kathryn Blaze Baum, Mark Hume & Gloria Galloway, “BC report finds

- failing to protect Indigenous girls in care from police intervention, charges, arrests and incarceration in youth corrections at staggeringly disproportionate levels;
- allowing state care (foster care, group homes) to function as a conduit for Indigenous girls into prostitution, sexual exploitation, sex trafficking, disappearances, incarceration, and death.<sup>205</sup>

90. These practices violate the rights of Indigenous women and girls to equality and non-discrimination,<sup>206</sup> to life and security of the person,<sup>207</sup> to freedom from violence,<sup>208</sup> and to family life.<sup>209</sup> In order to eliminate the violence against Indigenous women and girls, governments in Canada must radically change child welfare systems and practices.

91. While the federal government is working with the three recognized National Aboriginal Organizations – the Assembly of First Nations (AFN), Metis National Council (MNC) and Inuit Tapiriit Kanatami - on possible federal legislation related to child welfare, the foster care rates

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indigenous girls in care more likely to face sexual abuse”, *The Globe and Mail* (4 October 2016), online: <<https://www.theglobeandmail.com/news/british-columbia/damning-bc-report-finds-indigenous-girls-in-care-more-likely-to-face-sex-abuse/article32230796/>>.

<sup>205</sup> NWAC has reported on the links between care facilities and sex trafficking and exploitation. See Native Women’s Association of Canada, “Sexual Exploitation and Trafficking of Aboriginal Women and Girls: Literature Review and Key Informant Interviews” (March 2014), online: <[https://www.nwac.ca/wp-content/uploads/2015/05/2014\\_NWAC\\_Human\\_Trafficking\\_and\\_Sexual\\_Exploitation\\_Report.pdf](https://www.nwac.ca/wp-content/uploads/2015/05/2014_NWAC_Human_Trafficking_and_Sexual_Exploitation_Report.pdf)>. Official statistics from the Winnipeg Police Board indicated that 83% of missing-persons incidents in Winnipeg involve CFS children and youth, with 71% of missing persons being female. See Winnipeg Police Service, “Indigenous Women: Safety & Protection,” Winnipeg Police Board 2015 2nd Quarter Update (31 August 2015), online: <<https://s3.amazonaws.com/s3.documentcloud.org/documents/2379659/indigenous-women-safety-amp-protection-report.pdf>>. See also Caroline Barghout, “Tina Fontaine met social workers, police and health-care workers – but no one kept her safe,” *CBC News* (23 February 2018), online: <<https://www.cbc.ca/news/canada/manitoba/tina-fontaine-system-failed-1.4548314>>; Tavia Grant, “Missing and Murdered: The Trafficked,” *The Globe and Mail* (10 February 2016), online: <<https://www.theglobeandmail.com/news/national/the-trafficked-sexual-exploitation-is-costing-canadian-women-their-lives/article28700849/>>.

<sup>206</sup> *Charter*, *supra* s 15; ICCPR, art 26; CERD, art 2(a); CEDAW, art 2(d); CRC, art 2; UNDRIP, art 2.

<sup>207</sup> *Charter*, *supra* s 7; ICCPR, art 9; UNDRIP, art 22(2); UDHR, art 3.

<sup>208</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No 19: Violence against women*, adopted 1992, UN Doc A/47/38 at 1 (1993), reprinted in UN Doc HRI/GEN/1/Rev.6 at 243 (2003), online: <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf)>; UNDRIP, art 22(2); IACHR Report 2017, at paras 66-75.

<sup>209</sup> UDHR, art 16(2), CEDAW, art 16(e), CRC, art 9.1. See also, UNHRC, Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, 31<sup>st</sup> Sess, adopted 29 January 2016, UN Doc A/HRC/31/37.

**“...foster care functions as a conduit for Indigenous girls into sexual exploitation, sex trafficking, disappearances, incarceration, and death.”**

continue to increase to staggering levels.<sup>210</sup> Any new scheme must address the gross failures of the child welfare system, including the failures: to recognize the profound harms to Indigenous women and girls caused by child welfare practices and to protect and fulfill their rights; to end the racially discriminatory underfunding of child and family services on reserve;<sup>211</sup> to recognize

and adequately fund Indigenous jurisdiction over their own family services. Any new scheme must be designed in partnership with Indigenous women experts and advocates and communities.

#### 4) Police and Justice System

##### a. Racialized and Sexualized Violence in Policing

92. There is a long and well-documented history of racism and abuse towards Indigenous peoples by the justice system and law enforcement in Canada. In 1989, the *Royal Commission on the Donald Marshall Jr., Prosecution* found that the criminal justice system failed Marshall “at virtually every turn” due “to the fact that Donald Marshall, Jr., is a Native.”<sup>212</sup> The 2004 *Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform* noted: “[R]acism is a major obstacle to healthy relations with the First Nations and ... police organizations.”<sup>213</sup> The *Ipperwash Inquiry* into the shooting death of unarmed Dudley George

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<sup>210</sup> According to data from the 2016 Census, while 7.7% of all children under 14 are Indigenous, Indigenous children account for 52.2% of children under 14 in foster care. See Indigenous Services Canada, “Reducing the number of Indigenous children in care” (2018), online: <<https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>>.

<sup>211</sup> The federal government needs to immediately and fully comply with the orders of the Canadian Human Rights Tribunal in the First Nations Family and Child Caring Society case, but is instead dragging its feet on full implementation, especially with regard to the financial component including basic socio-economic needs. See e.g. Brittany Hobson, “If you don’t have water... programs aren’t going to do you a lot of good’: Cindy Blackstock testifies at MMIWG hearings,” *National News* (3 October 2018), online: <<https://aptnnews.ca/2018/10/03/if-you-dont-have-water-programs-arent-going-to-do-you-a-lot-of-good-cindy-blackstock-testifies-at-mmiwg-hearings/>>.

<sup>212</sup> Nova Scotia, *Royal Commission on the Donald Marshall, Jr, Prosecution, Digest of Findings and Recommendations*, Chair: T Alexander Hickman, CJ (Halifax: Province of Nova Scotia, 1989) at 1, online: [https://www.novascotia.ca/just/marshall\\_inquiry/\\_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution\\_findings.pdf](https://www.novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf) [Commission on the Donald Marshall, Jr, Prosecution].

<sup>213</sup> Saskatchewan, *Commission on First Nations and Métis Peoples and Justice Reform, Final Report: Legacy of Hope: An Agenda for Change*, Chair: J Wilton Littlechild (Saskatoon: Commission on First Nations and Métis Peoples and Justice Reform, 2004) vol 1, chapter 5 at 6, online: <<http://www.publications.gov.sk.ca/details.cfm?p=24237>>.

concluded in 2007 that: “cultural insensitivity and racism was not restricted to a few ‘bad apples’ with the OPP but was more widespread.”<sup>214</sup>

93. In 1999, the *Aboriginal Justice Inquiry of Manitoba* concluded: “The justice system has failed Manitoba’s Aboriginal people on a massive scale.”<sup>215</sup> It went on to express particular concern for the experiences of Indigenous women and children: “Aboriginal women and their children suffer tremendously as victims in contemporary Canadian society. They are the victims of racism, of sexism and of unconscionable levels of domestic violence. The justice system has done little to protect them from any of these assaults”.<sup>216</sup>

94. Racism in policing towards Indigenous women and girls creates problems of both over- and under-policing. Over-policing of Indigenous peoples includes higher rates of arrests and incarceration,<sup>217</sup> excessive use of force and assaults,<sup>218</sup> and deaths in police custody.<sup>219</sup> Under-policing includes police failures to come when called in emergencies, failures to open investigations into missing Indigenous women and girls, and/or incomplete or incompetent police investigations.<sup>220</sup> The Ontario Human Rights Commission released its interim findings on the cumulative impacts and significant harm caused to Indigenous peoples from racial profiling by police.<sup>221</sup> Similarly, the report of the Office of the Independent Police Review Director found that in Thunder Bay racial discrimination led to failures in policing of Indigenous peoples.<sup>222</sup>

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<sup>214</sup> Ontario, Ipperwash Inquiry, *Report of the Ipperwash Inquiry*, Commissioner: The Honourable S Linden (Toronto: Ipperwash Inquiry, 2007), vol 2 at 272, online: <[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol\\_2/pdf/E\\_Vol\\_2\\_Full.pdf](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_2/pdf/E_Vol_2_Full.pdf)>.

<sup>215</sup> Report of the Aboriginal Justice Inquiry of Manitoba, vol 1 at 1, online: <<http://www.ajic.mb.ca/volume.html>>.

<sup>216</sup> *Ibid* at Chapter 13.

<sup>217</sup> P Palmater, “Confronting Racism and Over-Incarceration of Indigenous Peoples in Canada” (2018) 27:2 *Journal of Community Corrections* 5-12(8).

<sup>218</sup> Human Rights Watch, “Submission to the Government of Canada: Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence” (Toronto: Human Rights Watch, June 2017), online: <https://www.hrw.org/news/2017/06/19/canada-police-fail-indigenous-women-saskatchewan> [HRW SK Submission].

<sup>219</sup> Jaques Marcoux & Katie Nicholson, “Deadly force: fatal encounters with police in Canada: 2000-2017”, *CBC News* (4 April 2018), online: <<https://newsinteractives.cbc.ca/longform-custom/deadly-force>> [CBC, Deadly Force].

<sup>220</sup> Those Who Take Us Away; HRW SK Submission; Stolen Sisters at 17; Canada, Parliament, House of Commons, Standing Committee on the Status of Women, *Interim Report: Call into the Night: An Overview of Violence against Aboriginal Women*, 40th Parl, 3rd Sess, No 14 (March 2011) at 17 (Chair: Hon Hedy Fry, MP), online: [http://publications.gc.ca/collections/collection\\_2011/parl/XC71-403-1-1-04-eng.pdf](http://publications.gc.ca/collections/collection_2011/parl/XC71-403-1-1-04-eng.pdf)>; BC Oppal Inquiry, Volume IIB.

<sup>221</sup> OHRC, *Under Suspicion*, *supra*.

<sup>222</sup> The OHRC found that investigators of the Thunder Bay Police Service (TBPS) “too readily presumed accident in cases of Indigenous sudden deaths,” “failed to take even the most basic investigative steps in a number of sudden death cases,” and “repeatedly relied on generalized notions about how Indigenous people likely came to their deaths, and acted, or refrained from acting, based on those biases.” See Ontario, Office of the Independent Police Review Director, *Broken Trust: Indigenous People and the Thunder Bay Police Service* (Toronto: OIPRD, 2018) at 182-184, online: <<http://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf>>.



95. Recent data on police involved fatalities in Canada shows that Indigenous peoples are grossly over-represented.<sup>223</sup> Despite being only 15% and 16% of the population, Indigenous peoples represented 63% and 58% of police involved fatalities in Saskatchewan and Manitoba, respectively.<sup>224</sup> In provinces like Quebec and Nova Scotia, the numbers of police involved fatalities of Indigenous peoples are 10 times their portion of the population.<sup>225</sup>

96. The deep-seated racism against Indigenous peoples, which the Ipperwash Inquiry found to be “widespread” in policing, is compounded by sex discrimination and how sexual violence against women is viewed and treated by police. More than 20% of all sexual assault claims in Canada are dismissed as “unfounded” or baseless.<sup>226</sup> Seven provinces and territories had unfounded rates of more than 25% and as high as 32% in NB.<sup>227</sup> Some cities have even higher unfounded rates; Saint John, NB, has a staggering unfounded rate of 51% (see *Appendix C*).<sup>228</sup>

97. However, the intersection of racial and sexual discrimination in policing combines to create a unique form of racially targeted and sexually violent treatment of Indigenous women and girls by police.<sup>229</sup> Not only are Indigenous women and girls less likely to have their claims of sexual assault taken seriously by police, but they have the added fear of police committing acts of sexualized violence against them.<sup>230</sup> Some Indigenous women and girls do not trust police because, as they say, “They either rape you or arrest you.”<sup>231</sup> The fact that a police supervisor can permit a police officer to take home with him an Indigenous woman whom he arrested for drunkenness - on the grounds that “You arrested her, you can do whatever the fuck you want to do”<sup>232</sup> - is evidence that Indigenous women's distrust is well-founded.

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<sup>223</sup> CBC, *Deadly Force*.

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid.*

<sup>226</sup> “In a 20-month-long investigation into how police handle sexual assault allegations, *The Globe and Mail* gathered data from more than 870 police forces. The findings expose deep flaws at every step of the process”. See Robyn Doolittle, “Unfounded: Why Police Dimiss 1 in 5 Sexual Assault Claims as Baseless”, *The Globe and Mail* (3 February 2017), online: < <https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/> > [*Unfounded*].

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> Pamela Palmater, “Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry” (2016) 28:2 *CJWL* 253.

<sup>230</sup> HRW, *Those That Take Us Away*, *supra*.

<sup>231</sup> Canada, Public Safety Canada, *Trafficking of Aboriginal Women and Girls*, by Yvonne Boyer and Peggy Kampouris (Ottawa: Public Safety Canada, 2014) at 17, online: <[http://publications.gc.ca/collections/collection\\_2015/sp-ps/PS18-8-2014-eng.pdf](http://publications.gc.ca/collections/collection_2015/sp-ps/PS18-8-2014-eng.pdf)>.

<sup>232</sup> H Moore, “Mountie takes woman home from jail to ‘pursue a personal relationship’”, *CBC News*, (8 January 2015), online: <<http://www.cbc.ca/news/canada/manitoba/mountie-takes-woman-home-from-jail-to-pursue-a-personal-relationship-1.2893487>>.

98. This is an old problem. Early historical records, court documents and oral histories detail the sexually violent interactions of the North West Mounted Police (NWMP with Indigenous women and girls: “governments agents sometimes withheld rations to reserve communities unless Aboriginal women were made available to them. The NWMP often turned a blind eye to such practices, engaging in their own coercive relations with Aboriginal women...NWMP has easy sexual access to Aboriginal women who families were starving.”<sup>233</sup> As the widespread sexual abuse and violence that occurred in residential schools has left a devastating inter-generational legacy that continues into the present, so too has the long history of racialized and sexualized violence against Indigenous women and girls by police.

99. Indigenous women's fear of police has been documented by Human Rights Watch (HRW) as being similar to that of women in post-conflict countries: “The palpable fear of the police was accompanied with a notable matter of fact manner when mentioning mistreatment by police, reflecting a normalized expectation that if one was an indigenous woman or girl, police mistreatment is to be anticipated”.<sup>234</sup> However, when

***“...Canada has a serious problem of violence by police officers that targets Indigenous women and girls. This is not a matter of a ‘few bad apples.’”***

confronted with these reports, police forces close ranks and Police Chiefs, police unions and even local politicians often deny the problem. When confronted with the HRW report, the head of the RCMP sent an email to all his officers telling them: “My message to you today is—don't be worried about it. I've got your back. Keep doing the great work you are doing.”<sup>235</sup> This brotherly solidarity works to ensure that there is little accountability for sexualized violence committed by officers.<sup>236</sup> Police who turn a blind eye to sexualized violence by their colleagues are also failing to protect Indigenous women.<sup>237</sup>

100. Police forces across the country are implicated, A large number of police officers from Val D'or Quebec were suspended after 37 allegations of sexualized violence were brought by

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<sup>233</sup> S Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George” in S Razack, ed, *Race, Space, and the Law: Unmapping White Settler Society* (Toronto: Between the Lines, 2002), 121 at 99.

<sup>234</sup> HRW, *Those Who Take Us Away*, *supra* at 34.

<sup>235</sup> David Akin, “RCMP head boosts morale in midst of sex allegations”, *The Niagara Falls Review* (19 February 2013), online: <<https://www.pressreader.com/canada/the-niagara-falls-review/20130219/281642482575869>>.

<sup>236</sup> The Canadian Press, “Hundreds of cases of police corruption, RCMP study says” (Toronto: CBC, May 18, 2014), online: <<https://www.cbc.ca/news/canada/manitoba/hundreds-of-cases-of-police-corruption-rcmp-study-says-1.2646928>>. See also Catou MacKinnon, “SQ officers ignore repeated calls to remove ‘solidarity’ symbol from vests”, *CBC*, 19 Sep 2018, online: <<https://www.cbc.ca/news/canada/montreal/sq-officers-ignore-repeated-calls-to-remove-solidarity-symbol-from-vests-1.4829833>>.

<sup>237</sup> See for example HRW, *Those Who Take Us Away*, *supra* at 73-76.

Indigenous women and girls. Instead of committing to get to the root of the problem, the police union blamed the victims, and its members protested in solidarity.<sup>238</sup> The ongoing *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec* has also heard testimony about damaged relations with the police.<sup>239</sup> There are other known cases of police sexualized violence against women, and specifically against Indigenous women and girls, including stalking, physical assaults, sexual assaults, sexual exploitation of young girls, human trafficking and child pornography.<sup>240</sup> These reports, inquiries, and cases explode the myth, perpetuated by police unions, that this is a matter of “a few bad apples.” In fact, Canada has a serious problem of violence by police officers that targets Indigenous women and girls.

## b. Under-protection

101. Under-policing, or under-protection, is equally serious. Reports from family members and friends of missing and murdered women reveal a pattern of indifference, blaming, and hostility towards the women reported missing, and the family members. Indigenous women and girls are

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<sup>238</sup> “Police union defends Val d’Or officers, warns stories of abuse are only allegations”, *CBC News* (26 October 2015), online: < <https://www.cbc.ca/news/canada/montreal/union-defends-val-d-or-police-aboriginal-women-abuse-1.3289641>>.

<sup>239</sup> Susan Bell, “Quebec Native Women scale back participation in inquiry into treatment of Indigenous people”, *CBC News* (25 October 2017), online: < <https://www.cbc.ca/news/canada/north/quebec-native-women-indigenous-inquiry-1.4371991>>.

<sup>240</sup> See for example Benjamin Shingler, “Former Quebec police officer charged with armed, sexual assault dating back to early 1990s”, *CBC*, 17 November 2016, online: <<https://www.cbc.ca/news/canada/montreal/val-dor-quebec-police-charges-1.3854976>>; “Police break First Nations woman’s shoulder, charge her with assault”, *CBC*, 11 June 2015, online: <https://www.cbc.ca/news/canada/thunder-bay/police-break-first-nations-woman-s-shoulder-charge-her-with-assault-1.3108279>>; Christopher Reynolds, “Bra removal sets woman free in court”, *Toronto Star* (16 July 2016), online: <<https://www.thestar.com/news/gta/2016/07/16/bra-removal-sets-woman-free-in-court.html>>; “Ottawa police officer charged in Stacy Bonds case”, *CBC News* (15 Mar 2011), online: <<https://www.cbc.ca/news/canada/ottawa/ottawa-police-officer-charged-in-stacy-bonds-case-1.997418>>; Alyshah Hasham, “One-year jail term for cop who claimed overtime while watching child porn”, *Toronto Star* (20 March 2017), online: <<https://www.thestar.com/news/gta/2017/03/20/one-year-jail-term-for-cop-who-claimed-overtime-while-watching-child-porn.html>>; “Ex-police officer pleads guilty to child porn charges”, *CBC News* (17 May 2010), online: <<https://www.cbc.ca/news/canada/calgary/ex-police-officer-pleads-guilty-to-child-porn-charges-1.891393>>; Tim Alamenciak, “Toronto police officer charged with making child pornography”, *Toronto Star* (10 September 2013), online: [https://www.thestar.com/news/crime/2013/09/10/toronto\\_police\\_officer\\_charged\\_with\\_making\\_child\\_pornography.html](https://www.thestar.com/news/crime/2013/09/10/toronto_police_officer_charged_with_making_child_pornography.html); Emma McIntosh, “Retired York police officer who pleaded guilty to child sex offences gets two years in prison”, *Toronto Star* (10 November 2017), online: <<https://www.thestar.com/news/crime/2017/11/10/retired-york-police-officer-who-pled-guilty-to-child-sex-offences-gets-two-years-in-prison.html>>; “Ottawa police officer facing more charges”, *CBC News* (27 September 2018), online: <<https://www.cbc.ca/news/canada/ottawa/ottawa-police-eric-post-new-charges-1.4841670>>; Kate Dubinski, “Former human trafficking cop pleads guilty to discreditable conduct”, *CBC News* (17 August 2018), online: <<https://www.cbc.ca/news/canada/london/london-ontario-police-human-trafficking-sgt-michael-hay-guilty-discreditable-conduct-john-sting-1.4789289>>; Manisha Krishnan, Marco Chown Oved & Wendy Gillis, “Three Toronto police officers charged with gang sexual assault”, *Toronto Star* (19 February 2015), online: <<https://www.thestar.com/news/crime/2015/02/19/three-toronto-police-officers-charged-with-sexual-assault.html>>.

believed to be at fault for living so-called 'high-risk' lifestyles when the high risk stems from being born Indigenous and female. Assumptions that Indigenous women and girls are not at risk, or, if they are, have only themselves to blame, are often used to justify failures to respond quickly to reports of missing women, and to thoroughly investigate and prosecute violence against them, including murders.<sup>241</sup>

### c. Police Accountability and Oversight

102. The mistrust between Indigenous women and girls and the police is also fueled by failures to ensure that there are effective police complaints procedures.<sup>242</sup> Creating trust between Indigenous women and police authorities requires independent oversight of policing, by civilian and Indigenous representatives, so that complaints can be lodged safely, and investigated thoroughly, by a body that has authority to take necessary disciplinary steps, including filing criminal charges.<sup>243</sup>

### d. Data Collection

103. Canadian and international human rights experts have repeatedly found that data collection by police agencies on cases of missing and murdered Indigenous women and girls, and on violence against Indigenous women, is incomplete and unreliable. Part of Canada's due diligence obligation under international law is the obligation to collect comprehensive sex- and race-disaggregated data on violence against women.<sup>244</sup> In failing to meet this standard and requiring

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<sup>241</sup> British Columbia, Missing Women Commission of Inquiry, *Forsaken: the report of the Missing Women Commission of Inquiry*, Volume I at 111-112, Commissioner: Wally T Oppal, QC (Victoria: Province of British Columbia, 2012), online: <<http://www.missingwomeninquiry.ca/obtain-report/>> [BC Oppal Inquiry]; Native Women's Association of Canada, "Voices of Our Sisters In Spirit: A Report to Families and Communities" (March 2009), online: <[http://www.nwac.ca/sites/default/files/download/admin/NWAC\\_VoicesofOurSistersInSpiritII\\_March2009FINAL.pdf](http://www.nwac.ca/sites/default/files/download/admin/NWAC_VoicesofOurSistersInSpiritII_March2009FINAL.pdf)>.

<sup>242</sup> See *Those Who Take Us Away*; HRW SK Submission; IACHR Report 2014 at paras 234-243; CEDAW Report 2015 at para 158. See also Giuseppe Valiante, "RCMP Rejects 90% of Formal Complaints", *IF Press* (24 October 2014), online: <<http://www.ifpress.com/2014/10/27/rcmp-rejects-90-of-formal-complaints>>.

<sup>243</sup> Many justice and policing inquiries and investigations ultimately recommend that police officers get more training in the area of diversity, inclusion, non-discrimination, and sexual harassment. They also recommend cultural awareness training or experiential learning. But training is not a solution to the crisis. It is not an adequate or appropriate response to acts of sexualized violence by police, nor is it the answer to failures to protect and investigate. Crimes should be treated as such and perpetrators removed from police forces; standards and protocols must be in place to ensure that appropriate disciplinary measures can be taken when those standards are not met. Nonetheless, FAFIA and Partners support the IACHR recommendation "that police officers, including both RCMP and Vancouver Police ... receive mandatory and ongoing training in the causes and consequences of gender-based violence in general and violence against indigenous women in particular. This includes training on the police duty to protect indigenous women from violence" (IACHR Report 2014 at para 313).

<sup>244</sup> The Due Diligence Standard; UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and State response*, UNGAOR, 7th Sess, UN Doc. A/HRC/7/6 (2008) at para 30, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/104/47/PDF/G0810447.pdf?OpenElement>>. See also: UN Committee on the

minimum standards of sex- and race-disaggregated data collection across all jurisdictions, Canada imposes an obstacle to understanding the actual rates of violence and the perpetrators of violence against Indigenous women and girls – including police themselves<sup>245</sup> - and ensuring that cases are duly investigated and prosecuted.

104. The CEDAW Committee found “serious gaps” in police data collection, “which result in an unclear picture of the actual scale of violence against aboriginal women, in particular, cases of missing and murdered aboriginal women.”<sup>246</sup> The lack of accurate data has “impaired the development of effective strategies and solutions within the criminal justice system.”<sup>247</sup> The CERD Committee,<sup>248</sup> the Human Rights Council Working Group,<sup>249</sup> and the Inter-American Commission on Human Rights<sup>250</sup> have echoed these concerns.<sup>251</sup>

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Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 9: Statistical data concerning the situation of women*, CEDAW, 8th Sess, UN Doc A/44/28 (1989), online: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/A\\_44\\_38\\_3724\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_44_38_3724_E.pdf); UN General Assembly, *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples: resolution adopted by the General Assembly*, UNGAOR, 69th Sess, UN Doc A/RES/69/2, online: <<https://undocs.org/A/RES/69/2>>.

<sup>245</sup> The RCMP recently settled a massive class action lawsuit involving thousands of female RCMP officers and staff for sexual and physical assaults including rape – by their own male RCMP colleagues. See Rachel Houlihan & Dave Seglins, “RCMP harassment claims could hit 4,000 in wake of #MeToo, lawyers say”, *CBC News* (31 January 2018), online: <https://www.cbc.ca/news/investigates/rcmp-harassment-claims-could-hit-4-000-in-wake-of-metoo-lawyers-say-1.4510891>; Kathleen Harris, “Mounties offer apology and \$100M compensation for harassment, sexual abuse against female members”, *CBC News*, (6 October 2016), online: <<https://www.cbc.ca/news/politics/rcmp-paulson-compensation-harassment-1.3793785>>. Another class action lawsuit has been launched by thousands of male and female RCMP officers, staff, students and volunteers claiming systemic bullying, intimidation and harassment leaving individuals with physical and mental injuries. See Rachel Houlihan & Dave Seglins, “RCMP face \$1.1B lawsuit over bullying, harassment claims dating back decades”, *CBC News*, 25 June 2018), online: <<https://www.cbc.ca/news/canada/rcmp-bullying-harassment-claims-lawsuit-1.4720126>>. While there is no investigation, lawsuit or compensation for Indigenous women and girls who have been victims of police sexualized violence, these settlements also preclude knowing the actual numbers of police perpetrators by force.

<sup>246</sup> CEDAW Report 2015 at paras 159-166.

<sup>247</sup> *Ibid.*

<sup>248</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, UNGAOR, 93rd Sess, UN Doc CERD/C/CAN/CO/21-23 (2017) at paras 5, 23-24, online: <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fCAN%2fCO%2f21-23&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fCAN%2fCO%2f21-23&Lang=en)>.

<sup>249</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada, UNGAOR, 24th Sess, UN Doc A/HRC/24/11 (2013), online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/152/42/PDF/G1315242.pdf?OpenElement>>.

<sup>250</sup> IACHR Report 2014.

<sup>251</sup> HRW SK Submission at 21, citing Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of States parties*, UN Doc CEDAW/C/CAN/CO/8-9 (2016), online:

105. The RCMP have not committed to coordinated sex- and race-disaggregated data collection.<sup>252</sup> The RCMP have acknowledged that the reporting of the number of cases of missing and murdered Indigenous women and girls in the jurisdictions where RCMP are authorized to do the policing contains error and imprecision due to the extensive time period over which data has been collected, differing data interpretation, inconsistency of variables used over the review period, and multiple data sources (with different purposes, collection methodologies, and definitions).<sup>253</sup> The RCMP's data contained in its 2014 and 2015 reports is similarly unreliable.<sup>254</sup> For example, police likely miscategorized some Indigenous women as another ethnicity<sup>255</sup>, excluding them from the data set.<sup>256</sup>

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<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fCAN%2fCO%2f8-9&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fCAN%2fCO%2f8-9&Lang=en)>. See also *Those Who Take Us Away at 25-27*. To date, Canada still has no plan for standardized and mandatory data collection that is coordinated across all jurisdictions and requires the collection of race and sex-disaggregated data for the perpetrators and victims of violent crime, including homicide and assault. Disparate race- and gender- data collection across the various police agencies that operate in different jurisdictional contexts means that Statistics Canada's aggregated data will be incomplete. See Committee on the Elimination of Racial Discrimination, Twenty-first to twenty-third periodic reports of States parties due in 2015, Canada, UN Doc CERD/C/CAN/21-23 (2016) at para 67, online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fCAN%2f21-23&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fCAN%2f21-23&Lang=en)>.

<sup>252</sup> For example, there is no mention of any initiative taken to collect race/gender disaggregated data in Canada, Royal Canadian Mounted Police, *Working Together to End Violence Against Indigenous Women and Girls National Scan to RCMP Initiatives May 2017* (Ottawa: RCMP, May 2017), online: <<http://www.rcmp-grc.gc.ca/wam/media/1830/original/c9e8444da1a3ddb48aefae3f48a7306.pdf>>. See also the RCMP, National Centre for Missing Persons and Unidentified Remains (NCMPUR) which has been established in part to respond to the crisis, but has not been a part of any institutional change in data collection to mandate the collection of race and sex disaggregated data: Canada, Royal Canadian Mounted Police, "National Centre for Missing Persons and Unidentified Remains" (Ottawa: RCMP, March 15, 2018), online: <<http://www.canadasmising.ca/about-ausujet/index-eng.htm>>.

<sup>253</sup> Canada, Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: 2015 Update to the National Operational Overview* (Ottawa: RCMP, 2015) at 3, online: <<http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-2015-update-national-operational-overview>>.

<sup>254</sup> Legal Strategy Coalition on Violence Against Indigenous Women. See also National Inquiry into Missing and Murdered Indigenous Women and Girls, "Truth-Gathering Process – Part II Institutional Hearings, "Police Policies and Practices"", Part II, vol 6, at 276-277, online: <[http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20180625\\_MMIWG\\_Regina\\_Policing\\_Part\\_II\\_Volume\\_VI.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/20180625_MMIWG_Regina_Policing_Part_II_Volume_VI.pdf)>.

<sup>255</sup> RCMP data from 2014 specifically noted that the category of "Aboriginal origin" was only recently added to the Canadian Police Information Centre (CPIC) so this will limit actual number of Indigenous women included in their report. The same limitations apply to the identification of the alleged perpetrators. The report emphasizes the fact that in the limited cases where race is identified, it is through subjective measures – based on the officer's impression – i.e. racist conceptions of what an Indigenous person looks like (skin colour) versus actual identity and varies widely throughout Canada – if noted at all. "This has meant a high number of Homicide Survey reports where the identity of the victim (and/or the accused) remained 'unknown'".

<sup>256</sup> Legal Strategy Coalition on Violence Against Indigenous Women, "Analyzing the 2014 Royal Canadian Mounted Police (RCMP) Report, Missing and Murdered Aboriginal Women: A National Operational Review" (June 2015), online: <<http://www.leaf.ca/wp-content/uploads/2015/06/2015-06-16-MMIW-LSC-2014-Fact-Sheet-final-version.pdf>>. The reports also undercount the numbers of murdered and missing Indigenous women and girls who

106. The Minister of Indigenous Affairs, Carolyn Bennett stated that the numbers of murdered and missing Indigenous women and girls is “way, way higher, than the RCMP’s 1200 figure” and (former) Minister for the Status of Women, Patty Hadju said the numbers were as high as 4000.<sup>257</sup> Until there is standardized and mandatory data collection across all police jurisdictions requiring the reporting of a victim’s ethnicity, augmented by aggregate data collection and reporting by Statistics Canada, Canada cannot ensure that all cases of missing and murdered Indigenous women and girls are identified, or duly investigated and prosecuted.<sup>258</sup>

#### e. Criminalization, Incarceration, and Over-classification of Indigenous Women

107. Most Indigenous women should not be incarcerated, as they are no risk to the public. They are incarcerated principally for crimes of poverty.<sup>259</sup> The Canadian justice system criminalizes acts of survival that Indigenous women engage in to navigate conditions of poverty, racism, sexism, violence, addiction and mental health. By doing so, the justice system at the federal and provincial levels blames and punishes Indigenous women for their oppressed conditions, rather than acknowledging or addressing them. **See Appendix A for the Canadian Association of Elizabeth Fry Societies (CAEFS) submission on this issue.**

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“erroneously” identified as white or never entered into CPIC. The cases of “suspected homicides or deaths” are also not included in the report. Similarly, neither report considers the numbers of Indigenous women whose files may have been misnamed as suicide or natural causes that were in fact deaths.

<sup>257</sup> 16 February 2016), online: <<https://www.cbc.ca/news/politics/mmiw-4000-hajdu-1.3450237>>.

<sup>258</sup> IACHR Report 2014 at 244-258; Feminist Alliance for International Action, Chair in Indigenous Governance & Canadian Association of Elizabeth Fry Societies, “Discrimination against Indigenous and Racialized Women in Canada: Report to the Committee on the Elimination of Racial Discrimination on the Occasion of the Committee’s twenty-first to twenty-third Periodic Review of Canada” (July 2017) at 29, online: <[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_NGO\\_CAN\\_28045\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_28045_E.pdf)>; Feminist Alliance for International Action & Ontario Native Women’s Association, “Indigenous Women and Girls in Canada: Report to the Human Rights Council on Canada’s Third Universal Periodic Review” (October 2017) at 12, online: [https://www.upr-info.org/sites/default/files/document/canada/session\\_30\\_-\\_may\\_2018/js14\\_upr30\\_can\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/canada/session_30_-_may_2018/js14_upr30_can_e_main.pdf). The Government of Canada’s Gender-Based Violence Knowledge Centre (KC) is to undertake “data collection and research in priority areas”; However, the Government of Canada does not hold out this knowledge centre and its funding as a solution to the need for standardized and mandatory data collection on murders and disappearances of Indigenous women and girls. Status of Women Canada, “It’s Time: Canada’s Strategy to Prevent and Address Gender-Based Violence” (Ottawa: Status of Women Canada, 19 June 2017), online: <[http://www.swc-cfc.gc.ca/violence/strategy-strategie/GBV\\_Fact\\_sheets\\_5.pdf](http://www.swc-cfc.gc.ca/violence/strategy-strategie/GBV_Fact_sheets_5.pdf)>. See also Status of Women Canada, “2017-2018 A Year in Review: Canada’s Strategy to Prevent and Address Gender-Based Violence” (Ottawa: Status of Women Canada, 19 June 2018), online: <<https://www.swc-cfc.gc.ca/violence/strategy-strategie/report-rapport2018-en.html>>.

<sup>259</sup> It is also extremely costly. It costs an average of \$192, 000 a year to incarcerate an Indigenous woman. This figure can increase to \$400,000 for segregation or specialized units. This money could be spent to benefit First Nations, Métis, and Inuit women and their communities. See Canada, Correctional Service of Canada, *Key Facts and Figures (2015-2016)* (Ottawa: Correctional Service Canada, 2017), online: <<http://www.csc-scc.gc.ca/publications/005007-3024-eng.shtml>>

## Priority Recommendation: A National Action Plan

108. As an urgent national priority, a coordinated, all-government, strategic National Action Plan should be formulated, with established program and service elements, and strategies, that will allow for variations in regional needs and delivery mechanisms, and that is accompanied by timelines for implementation. Measurable goals for improvements in social and economic indicators, and in justice system indicators, should be set, with timelines. The Government of Canada should provide funding transfers to the provinces and territories conditional on

***“A coordinated, all-government National Action Plan must be formulated, with the full participation of Indigenous women, to address the crisis of violence.”***

implementation of plan elements, and on commitment to engage in coordinated strategies, public reporting, and monitoring, all done in partnership with Indigenous women, their chosen representatives, their governments and service agencies.

109. The National Action Plan should take into account differences in realities and needs among First Nations women living on and off

reserve, Métis women, and Inuit women. The Government of Canada should ensure that adequate funding is allocated to address program and service needs of First Nations women living on reserves through their governments and service agencies, especially those providing services to women. Funding should also be provided directly to Inuit governments and their service agencies, as well as to Métis women and their government and service agencies. Significant funding should also flow from federal and provincial governments to First Nation, Inuit and Metis organizations that provide services to Indigenous women and children who live outside their home communities in rural, remote and urban areas. Any transfer of authority from federal, provincial or territorial governments to Indigenous communities for services, such as child and family services, must be accompanied by sufficient funds to support the services that are needed by Indigenous women, children and communities, and be done in partnership with Indigenous women, their chosen representatives and their Indigenous governments.

### a. Government of Canada Leadership

110. The Government of Canada should immediately take leadership on the issue of violence against Indigenous women and girls in full and equal partnership with Indigenous women and their advocates, organizations and home communities. United Nations treaty bodies have repeatedly urged Canada to use its leadership capacity and spending power to ensure consistent and coherent implementation of treaty rights in Canada.<sup>260</sup> Despite Canada's persistent objection

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<sup>260</sup> CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Canada, 7 November 2018, UN Doc CEDAW/C/CAN/CO/7 at paras 9-13 [2008 CEDAW Concluding Observations]; CRPD, Concluding observations on the initial report of Canada, 8 May 2017, UN Cod CPRD/C/CAN/CO/1 at para



that it cannot take responsibility for treaty implementation by the provinces and territories because of the constitutional division of powers, United Nations and regional human rights bodies reject this claim and continue to identify the federal government as the one with the capacity and the tools to exercise leadership for the country on matters of human rights implementation.<sup>261</sup>

#### b. Use of the Federal Spending Power

111. Canada can use its constitutionally approved spending power to transfer funds to the provinces and territories, and to Indigenous communities, for expenditure on specified programs, services and strategies that will bring change for Indigenous women and girls. The spending power is a key tool for establishing equality-creating programs and services for Indigenous women and girls that are co-ordinated and stable. In its 2016 report on Canada, the Committee on Economic, Social and Cultural Rights urged the federal government to take the lead on human rights implementation by using funding and other agreements to “establish responsibilities for the implementation of [treaty] rights at the different levels”.<sup>262</sup> In 2016, the CEDAW Committee called on Canada to consistently use conditional and targeted federal funding to ensure that transfer payments promote compliance with the human rights of women.<sup>263</sup> This should include targeted payments to Indigenous women's groups and their home communities specifically for the benefit of Indigenous women and girls, and to support their development, and control of, services that will foster their equality.

#### c. Coordination with Provinces, Territories, and Indigenous Women regarding Plan

112. The Government of Canada should develop a process and mechanism for consultation with the provinces, territories, and, where relevant, municipal governments, and with Indigenous women and Indigenous women's organizations, to identify a priority set of programs, services and strategies that will remedy and prevent violence against Indigenous women and girls. The identification of priorities and formulation of a plan should be grounded in National Inquiry recommendations and those of parties to the Inquiry, on Canada's human rights obligations, including UNDRIP, and the recommendations of the CEDAW Committee and the IACHR, and on observations of United Nations treaty bodies, mandate holders, regional human rights experts, and Indigenous rights experts regarding the steps necessary to realize the human rights of Indigenous women and girls, and to prevent and remedy the violence.

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10(a) [2017 CRPD Concluding Observations]; CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights on the sixth periodic report of Canada, 23 March 2016, UN Doc E/C.12/CAN/CO/6 at para 7 [2016 Concluding Observations].

<sup>261</sup> The Vienna Convention on the Law of Treaties states in Article 27 that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Vienna Convention on the Law of Treaties, Concluded at Vienna, May 23, 1969, entered into force January 27, 1980.

<sup>262</sup> 2016 CESCR Concluding Observations at para 7.

<sup>263</sup> 2016 CEDAW Concluding Observations at para 11.

#### d. Indigenous Women's First Voice

113. Indigenous women know best what is needed to end the violence against them. A key principle of a rights based approach is to place their voices at the core of decision-making. Therefore, First Nations, Métis, and Inuit women must be leaders and decision-makers throughout the formulation, implementation, and monitoring of the National Action Plan.

#### e. Monitoring and Review

114. The National Action Plan will need a pro-active and independent review mechanism to ensure that implementation of the Plan can be monitored and reviewed. This mechanism should be led by Indigenous women and must permit Indigenous women, their organizations and home communities to have equal decision-making powers in evaluation, assessing progress, and correcting deficiencies on a regular basis, as well as ensuring regular public reporting.

#### f. Rights Claiming Mechanism

115. The National Action Plan must also include a rights claiming mechanism. Indigenous women must have a venue to bring forward systemic violations of rights – especially the rights to security of the person and an adequate standard of living. A rights-claiming mechanism in the Plan will begin to address the broader problem in Canada that “economic, social and cultural rights remain generally non-justiciable in domestic courts” and as a result there is “limited availability of legal remedies for victims in the event of Covenant rights’ violation.”<sup>264</sup> It will also permit identification of areas and situations where the Plan is not meeting goals and needs, and further actions are required.<sup>265</sup> ***See Appendix B for a more detailed response to Commissioner Robinson’s question posed on December 11, 2018.***

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<sup>264</sup> 2016 CESCR Concluding Observations at para 5.

<sup>265</sup> This should be undertaken in cooperation with efforts by Employment and Social Development Canada to establish a National Housing Advocate and National Poverty Reduction Advocate. The Government of Canada has included in Bill C-3, Gender Equity in Indian Registration Act (2010) (s. 9.1) online: [https://laws-lois.justice.gc.ca/eng/annualstatutes/2010\\_18/page-1.html](https://laws-lois.justice.gc.ca/eng/annualstatutes/2010_18/page-1.html) and in Bill S-3, An Act to amend the Indian Act in response to the Superior Court of Quebec decision in *Descheneaux c. Canada (Procureur général)*, (2017) online: <http://www.parl.ca/DocumentViewer/en/42-1/bill/S-3/royal-assent> (s. 10.1) provisions which specify that no person has a right to claim or receive any compensation or damages from the Crown because of the discrimination. These provisions are inconsistent with Principle 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly in December 2005, online: <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>. Principle 20 provides that "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."

## Recommendations

116. Implementation of the following recommendations should be included in the National Action Plan along with others made by Indigenous women and communities and human rights bodies.

### Indian Act Sex Discrimination

- The Government of Canada must immediately remove all aspects of sex discrimination from the *Indian Act*, and bring ss. 2.1, 3.1 and 3.2 of Bill S-3 into force without further delay.
- The Government of Canada should acknowledge that the *Indian Act* status registration provisions perpetuate discrimination based on the ground of sex, in contravention of the equality guarantees of the *Charter* and Canada's international treaty obligations, and withdraw its objections to the McIvor and Matson petitions currently filed with the United Nations treaty bodies.
- The Government of Canada should apologize in Parliament to First Nations women and their descendants for treating them as lesser human beings, and for the violations of their human rights, including their rights to equality, security, dignity, and the equal enjoyment of culture and participation in their communities, which the long-standing discrimination against First Nations women and their descendants has caused.
- The Government of Canada should compensate First Nations women and their descendants who have been denied equal Indian status because of sex discrimination for their loss of statutory benefits, treaty payments, and for the injury to their dignity and rights caused by the discrimination.<sup>266</sup>

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<sup>266</sup> The Government of Canada has included in Bill C-3, Gender Equity in Indian Registration Act (2010) (s. 9.1) online: [https://laws-lois.justice.gc.ca/eng/annualstatutes/2010\\_18/page-1.html](https://laws-lois.justice.gc.ca/eng/annualstatutes/2010_18/page-1.html) and in Bill S-3, An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général), (2017) online: <http://www.parl.ca/DocumentViewer/en/42-1/bill/S-3/royal-assent> (s. 10.1) provisions which specify that no person has a right to claim or receive any compensation or damages from the Crown because of the discrimination. These provisions are inconsistent with Principle 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly in December 2005, online: <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>. Principle 20 provides that "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."

## Social and Economic Condition

- As a key component of the National Action Plan, federal, provincial and territorial governments must develop a co-ordinated strategy to address and remedy the specific social and economic disadvantages of Indigenous women and girls, including poverty, inadequate housing, homelessness, lack of shelters and supports for Indigenous women who are fleeing violence, dealing with mental health problems, addiction, or exiting commercial sex, or trafficking, and ensure that adequate programs and social supports are available and accessible, taking into account the differing needs of First Nations, Métis and Inuit women, and their particular geographical locations.
- The Government of Canada must immediately increase the amount of the Canada Social Transfer payments to provinces and territories; earmark sufficient funds for social assistance; and make transfer payments conditional on provinces and territories setting social assistance rates at levels that recognize human rights obligations to ensure an adequate standard of living and prevent discriminatory effects of inadequate incomes for Indigenous women. For First Nations and Inuit women, needs and rights-based funding must fulfill the obligation to provide an adequate standard of living.
- The Government of Canada must, as a matter of urgency, ensure that the National Housing Strategy addresses the housing needs of Indigenous women and families, giving particular attention to the needs of Inuit women for adequate housing and for shelters in their hamlets to provide them with basic safety.

## Child Welfare/Family Services

Federal, provincial and territorial governments must redesign child welfare/family services in all jurisdictions in order to

- support Indigenous women's ability to care for their children and protect them inside their families and communities;
- protect Indigenous girls from dislocation, sexual abuse and precipitation into prostitution, sexual exploitation, sex trafficking, disappearances and death;
- prohibit apprehensions at births;
- prohibit any engagement of child welfare/family services officials in sterilizations of Indigenous women or girls;
- redesign funding formulas so that they incentivize keeping Indigenous children with their mothers, families and communities;
- redesign funding formulas so that they encourage and support Indigenous women to design and establish services that will meet their needs, and foster their equality and security, and those of their children;

- institute zero tolerance policies and strict performance codes and protocols for foster care/group homes to ensure that Indigenous girls are protected from sexual abuse while in care.

## **Policing and Justice System**

### **Co-ordination**

- As a part of a National Action Plan to end violence against Indigenous women and girls, federal, provincial and territorial governments must work together to develop and implement protocols, standards, and mechanisms to ensure inter-jurisdictional and inter-agency coordination of law enforcement agencies, as well as information-sharing and cooperation within RCMP and with other police agencies and Indigenous governments and police agencies.<sup>267</sup> Co-ordination, co-operation, and standard policies and procedures should be developed in the following areas:

### **Standards and Protocols**

- In partnership with Indigenous women and their home communities, national standards and protocols for police conduct should be developed for police when interacting with Indigenous women and girls, and when investigating crimes against them, including rape, assault, spousal violence and other forms of violence;
- A national policy for adoption by all governments and police agencies should be developed in partnership with Indigenous women and their communities that reiterates and reinforces the legal prohibitions that require all police officers in Canada to refrain from engaging in discrimination, harassment, denigration, intimidation, and any form of violence against Indigenous women and girls;
- All police agencies should be required to follow standardized and mandatory protocols on how to respond to cases of missing and murdered Indigenous women, and an independent civilian/Indigenous monitoring mechanism for the implementation of the protocols should be established, that provides for sanctions when they are not being applied.

### **Data Collection**

- A national centre for data on violence against Indigenous women and girls should be established, with resources to design appropriate protocols and systems to track all forms of violence against Indigenous women and girls using consistent and comprehensive methods with full participation of Indigenous women, their organizations and home communities;
- Through this centre, data on all forms of gender-based violence against Indigenous women and girls should be collected, disaggregated by sex, age, ethnic group, and the relationship

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<sup>267</sup> CEDAW Report 2015 at para 217(h); IACHR Report 2014 at para 307.

between the victim and the perpetrator; on protection orders, prosecutions and sentences imposed on perpetrators; on the number of indigenous women and girls who are trafficked; on cases of missing and murdered Indigenous women, including cold cases and suspicious deaths; and on all forms of violence against Indigenous women and girls that is committed by police officers;<sup>268</sup>

- The national centre for data should provide public access to data collected, and provide an archive of investigations and resources, in order to fulfill the right to truth.<sup>269</sup>

### **Police Violence**

- Federal, provincial and territorial governments, working together, should mandate a comprehensive national investigation into police violence against Indigenous women and girls in all police forces, noting all filed complaints, investigations, charges, discipline, and prosecutions. This investigation should be conducted by independent experts, working with Indigenous women, and include a comprehensive review of police acts, regulations and policies related to prevention, investigation and discipline for acts of sexism, racism, abuse, and sexualized violence against Indigenous women and girls.

### **Oversight and Police Accountability**

- Federal, provincial and territorial governments should establish new independent and effective civilian and Indigenous oversight mechanisms (including Indigenous women) for overseeing police conduct and for investigating reported incidents of police misconduct, including sexual offences by the police, and with authority to hold officials accountable through administrative, disciplinary, or criminal measures, as necessary;<sup>270</sup>
- Federal, provincial and territorial governments must ensure that Indigenous women and their families have access to effective procedures for filing complaints against police, and have the necessary information and supports available to use such procedures, including legal representation;<sup>271</sup> in particular, access to complaint procedures to challenge police conduct must be facilitated for Indigenous women and their families living in remote areas, including by raising awareness in their communities, and other appropriate means.<sup>272</sup>

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<sup>268</sup> CEDAW Committee, 2016 Concluding Observations at para 25(f); IACHR Inquiry Report 2014 at para 310.

<sup>269</sup> Human Rights Council, Right to Truth (24 September 2012), “Encourages States that have not yet done so to establish a national archival policy that ensures that all archives pertaining to human rights are preserved and protected and to enact legislation that declares that the documentary heritage of the nation is to be retained and preserved and that creates a framework for managing State records from their creation to their destruction or preservation” at para 10, UN Doc. A/HRC/21/.

<sup>270</sup> CEDAW Report, *supra* at para 217(k).

<sup>271</sup> IACHR Report, *supra* at para 314.

<sup>272</sup> CEDAW Report, *supra* at para 217(l).

## **Criminalization and Incarceration**

As a part of the National Action Plan, federal, provincial and territorial governments, working together, should:

- Undertake a fundamental re-evaluation of the policing of Indigenous women and girls, justice system decisions, and corrections policies and decision-making in partnership with Indigenous women and their advocates, to identify strategies that will disrupt and reverse the pattern of incarceration and over-classification of Indigenous women, and establish programs and services that will support their decarceration and reintegration into families and communities.
- Establish judicial oversight of decisions made by Corrections Services Canada and provincial and territorial corrections systems about classification and segregation of Indigenous women, in light of the current rates of over-classification and segregation.<sup>273</sup>
- End mandatory minimum sentences and parole ineligibility periods, which have a disproportionate impact on Indigenous women, and do not permit relevant facts and circumstances to be taken into account in sentencing; support Bill S-251.
- End use of male guards in women's prisons and end strip searching within the detention systems of Canada, which is state-sanctioned sexual violence against women.
- End the use of segregation in all its forms.

## **Apology and Commemoration**

### **Issue a public apology**

As a part of the National Action Plan, federal, provincial and territorial governments should:

- Issue a joint public apology to acknowledge the role of governments at all levels in the violence against Indigenous women and girls and apologize to the women, families and Canadian society for allowing it to persist for generations, with an accompany scheme for providing reparations for past abuses.<sup>274</sup>

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<sup>273</sup> Public Works and Government Services Canada, 1996. Commission of Inquiry into certain events at the Prison for Women in Kingston, online: <[http://www.caefs.ca/wp-content/uploads/2013/05/Arbour\\_Report.pdf](http://www.caefs.ca/wp-content/uploads/2013/05/Arbour_Report.pdf)>.

<sup>274</sup> State issuance of a public apology to the States' respective Indigenous peoples is a commonplace and rudimentary practice. E.g., "Apology to Australian's Indigenous People," February 13 2008, Prime Minister Kevin Rudd; U.S. Congress, S.J.Res.14—A joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States (Introduced April 30, 2009) Canadian Prime Minister Stephen Harper publicly apologized for the government's role in separating, discriminating against, and abusing Indigenous Canadians for generations. Harper declared, "the government of Canada sincerely apologizes and asks the forgiveness of the Indigenous peoples of this country for failing them so profoundly. We are sorry." See also CEDAW Report, para. 129.

## **Integrate the experiences of Indigenous women in educational programs, museums and art**

- Train teachers to appropriately acknowledge and provide information about Canada’s history of violence against Indigenous women, and its root causes, in school and university curricula;<sup>275</sup> establish museum spaces and create displays and monuments to preserve the memory of the missing and murdered women;<sup>276</sup> support the artistic work, performances, exhibits, and publication of Indigenous women so that they can express, in many forms, the truths of Indigenous women's lives and experiences.

## **Supports for Families**

As a part of the National Action Plan, federal, provincial and territorial governments should:

### **Provide psychosocial support for families of victims**

- Provide families of missing and murdered Indigenous women in all jurisdictions with culturally-sensitive psycho-social support, including grief counseling and legal services.

### **Establish a dedicated office to help families address violence against Indigenous women**

- Create an office that functions as a liaison between affected families and law enforcement agencies to assist them to obtain information about cases of missing or murdered Indigenous women and girls, and to make decisions about further steps that may be appropriate. This office must be easily accessible, independent of the police, and function as a replacement for the Family Liaison Units,<sup>277</sup> to provide ongoing critical services, including legal support, to enable families of victims to pursue claims.

## **Conclusion**

117. The crisis of murdered and missing Indigenous women and girls has been created and is perpetuated by Canadian governments, institutions, and agencies. The infrastructure of violence is a complex of racist and sexist laws, policies, and practices that combine to create a unique form of violent misogyny, and that permit violence against Indigenous women and girls by both public and private actors to occur and continue. Despite knowing the root causes of the violence, and

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<sup>275</sup> Australia implemented Reconciliation Action Plans, a program that provides a new framework for organizations, businesses, and schools to support the national reconciliation movement. Schools and educational institutions can develop a Reconciliation Action Plan through Narragunnawali, an online platform that supports schools in Australia to develop environments that foster a higher level of knowledge and pride in Indigenous histories, cultures and contributions. See Reconciliation Australia, Narragunnawali, <https://www.narragunnawali.org.au> (last visited on Nov. 6, 2018).

<sup>276</sup> Such a museum would be similar to the widely renowned Yad VaShem Museum in Israel, which commemorates the victims of the Holocaust and highlights Jewish culture and how these people were affected by this systemic violence. See e.g. online: <<https://www.yadvashem.org/about.html>>.

<sup>277</sup> Canada, Department of Justice, “Family Information Liaison Units” (June 6, 2018), online: <<https://www.justice.gc.ca/eng/fund-fina/cj-jp/fund-fond/mmiw-fada/info.html>>.



its deadly consequences, governments in Canada continue to make conscious legal, policy and funding choices that sustain the crisis. In light of these facts, Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide* is also implicated. This Article defines the crime of genocide as including "killings", "causing serious physical or mental harm", "inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part", "imposing measures intended to prevent births within the group" and "forcibly transferring children of the group to another group."<sup>278</sup>

118. The Truth and Reconciliation Commission found that Canada was involved in cultural, physical and biological genocide because of, among other acts, the establishment and maintenance of the residential school system.<sup>279</sup> This Inquiry has revealed the practices of government and public institutions that form another part of the history of Canada's genocidal practices. These practices include:

- police violence against Indigenous women and girls which causes harm, both physical and mental;
- police neglect, indifference and failures to investigate which lead to disappearances and deaths;
- the impunity created for perpetrators of violence against Indigenous women and girls by the failure of police to protect them and the failure of the justice system to adequately punish their assailants or murderers;
- the maintenance of policies and resource allocations which impoverish Indigenous women and their home communities, affect their health and safety and put them at high risk of criminalization and sexual exploitation;
- the forced sterilization of Indigenous women;
- the apprehension of Indigenous babies at birth;
- the removal of thousands of Indigenous children from their mothers and home communities;

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<sup>278</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted December 9, 1948, G.A. Res. 260, U.N. GAOR, 3rd Sess., Part 1, at 174, U.N. Doc. A/810 (1948), art. II defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group."

<sup>279</sup> Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, at 1, online: <[http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\\_Summary\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf)>.

- the harms caused to girls when they are in foster care, including sexual and physical abuse, and the associated high risk of criminalization, sexual exploitation, and violence;
- and the overt sex discrimination at law which robs thousands of First Nations women and their descendants of their identities and rights as Indigenous women and forcibly assimilates them into non-Indigenous communities.

119. As the Truth and Reconciliation Commission did, the National Inquiry on Missing and Murdered Indigenous Women and Girls must take account of the seriousness of the acts and omissions of governments in Canada and hold them fully to account. The National Action Plan, which is the priority recommendation of this submission, must be grounded in truth, including the truth that systemic discrimination and violence against Indigenous women are instruments of genocide.

120. The National Inquiry now holds a deep knowledge of the violence and of the urgent need for transformative change. All recommendations must be centered around a National Action Plan that will bring bold, comprehensive national action.

## Appendix A: The over-incarceration of Indigenous women in Canada Canadian Association of Elizabeth Fry Societies

### Introduction

The Canadian Association of Elizabeth Fry Societies is dedicated to working alongside women and girls in the justice system, particularly those who are or may be, criminalized. In our national capacity, we maintain five regional advocacy teams of volunteers who visit the federal prisons for women on a monthly basis. The nature of the visits is to monitor the conditions of confinement and to provide human-rights based training and tools to encourage self-advocacy from within the Correctional Service of Canada prison system. We are the only organization engaged in this work within the women's prisons which makes us uniquely well positioned to address the deplorable conditions under which women in this country are held.<sup>280</sup>

The carceral system by its nature is maintained to isolate and silence society's most marginalized members. As a result, while the issue of the overrepresentation of Indigenous women has been well documented and publicized through national media, the fact remains that no concrete and significant action has yet addressed this issue.<sup>281</sup> With this brief submission, we have done our best to truthfully represent and honour Indigenous women's experiences in the justice and corrections systems to ensure their plights are included in the National Inquiry into Missing and Murdered Indigenous Women and Girls

### Common Systemic Factors contributing to MMIWG and Over Incarceration

CAEFS as an organization is often asked to respond to why so many Indigenous women end up in prison. Our justice system criminalizes acts of survival that women engage in as they try to navigate conditions of poverty, racism, sexism, violence, addiction and mental health. In doing so it repeats patterns of colonialism by responsabilizing women rather than acknowledging or addressing current social inequities. For Indigenous women the message is clear: you will be dislocated from family, punished and 'rehabilitated' to assimilate. As such, the corrections system by its very nature has no investment in addressing the root causes of criminalization and so it is unable to effectively address its rehabilitation and reintegration mandate.

We will look now at the common factors that contribute to translating the victimization of Indigenous women into their criminalization, disappearance and death. The unfortunate reality is that the long-term effects of colonization and inter-generational trauma our country has perpetrated against Indigenous women continue to be the principal factors in their being missing, murdered or incarcerated.<sup>282</sup>

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<sup>280</sup> Canadian Association of Elizabeth Fry Societies. More information available online: <[www.caefs.ca](http://www.caefs.ca) >

<sup>281</sup> Office of the Correctional Investigator, Annual Report 2017/18, available online: <http://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>

<sup>282</sup> Omstead, J. Over-Policed and Under-Protected: Connecting the Crisis of Missing and Murdered

## Violence

According to the 2014 General Social Survey, nearly twice as many Indigenous women who reported spousal violence experienced the most severe forms of sexual and physical violence (61%), whereas this was the case for 32% of non-Indigenous women. Indigenous women also reported that they feared for their lives at a higher frequency than did non-Indigenous women (53% versus 29%).<sup>283</sup>

The violent crimes for which women are charged and convicted must be appropriately contextualized. Overwhelmingly, the actions of women in these contexts are defensive or otherwise reactive to violence directed at themselves, their children, or another third party. The rate of violence for Inuit women in the north is 14 times higher than the national average in Canada.<sup>284</sup> Add to this the severe lack of shelters and housing options; there is nowhere in their communities to seek safety. This often results in violence which is criminalized and leads to their removal from their families, communities and culture.

## Poverty

The pathologizing of marginalization and social and economic disadvantage treats gaps in our social security net as pathways to prison. The crimes for which women are convicted tend to be non-violent and so not a threat to public safety such as property and drug offences which are principally motivated by economic factors of survival. We know the socio-economic realities that Indigenous communities must endure and still we ask why are there so many of them in prison? Let's discuss the leading causes of crime for women—Theft over \$5000 (23.9), Theft under \$5000 (37.2), Fraud (32.7), Trafficking of stolen goods (21.1).<sup>285</sup> Now compare those numbers with the fact that 37% of First Nations women living outside of the community are living in poverty;<sup>286</sup> that 30%-70% of Indigenous suffering from food insecurity, and that 40% of Inuit living in housing which is overcrowded.<sup>287</sup>

Violence as a precursor and contributing factor to criminalization is a reality for both the women we serve in our prison systems and the women and girls whose deaths the Inquiry takes as their primary concern—90% of federally sentenced women have histories of physical abuse, while 68% have histories of sexual abuse.<sup>288</sup> This Inquiry has focused, for good reason, on missing and

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Indigenous Women with their Mass Incarceration. Unpublished, April 2018. Available upon request from CAEFS.

<sup>283</sup> Statistics Canada. The General Social Survey. October 2018. Available online: <<https://www150.statcan.gc.ca/n1/pub/89f0115x/89f0115x2013001-eng.pdf>>

<sup>284</sup> *Ibid.*

<sup>285</sup> Statistics Canada. Women in Canada. A Gender-Based Statistical Report. July 2018. Available online: <<https://www150.statcan.gc.ca/n1/pub/89-503-x/89-503-x2015001-eng.htm>>

<sup>286</sup> Citizens for Public Justice. On the Margins: A Glimpse of Poverty in Canada. (October 2015). Available online: <https://cpj.ca/on-the-margins>

<sup>287</sup> National Collaborating Centre for Aboriginal Health. Housing as a Social Determinant of First Nations, Inuit and Métis Health. (2017). Available online: <<https://www.ccnca-nccah.ca/docs/determinants/FS-Housing-SDOH2017-EN.pdf>>

<sup>288</sup> Department of Justice. Aboriginal Victimization in Canada: A Summary of the Literature

murdered Indigenous women and girls; it must be recognized, however, that prisons contain too many women who have survived those circumstances and now find themselves imprisoned in a system that continues to traumatize and abuse them through the use of segregation, degradation, and strip-searching.

Further, it is no coincidence that as the numbers of Indigenous women in prison continue to rise so too do the numbers of Indigenous youth in jails and state care. 64% of incarcerated women are single mothers and have primary care responsibilities.<sup>289</sup> As a result, when women are incarcerated, too often their children end up in the child welfare system.<sup>290</sup> Indigenous children account for 7% of all children in Canada but almost one-half (48%) of all foster children.<sup>291</sup> The emotional and psychological trauma children experience due to the separation are not accounted for by the prison system, which continues to explicitly encourage women to relinquish custody and, through increasingly restrictive policies, discourage contact with their children. When an Indigenous woman is sentenced, the loss to her children is rarely considered. The National Inquiry must address the connection that in this country Indigenous women are at risk of going missing, being murdered, or incarcerated. The inclusion of their experience with the justice system and with the prison system is integral to the Inquiry's work.

### Access to Justice

When a First Nations, Métis, or Inuit woman appears in court, she goes before the same justice system that established the reserve system, residential schools, and the removal of children from their families. A significant piece of the over representation issue is tied to a justice system that does not acknowledge its own historical abuses and the impact of intergenerational trauma within our Indigenous communities.

An example of how the justice system has attempted to adapt for Indigenous people is the establishment of the 'Gladue Report' coming out of the 1999 Supreme Court of Canada decision, *R. v. Gladue*.<sup>292</sup> The Gladue report is a pre-sentencing document which the court can request under section 718.2(e) of the Criminal Code and is intended to document the historical, social, economic and medical factors that have contributed to an Indigenous persons' criminalization. Somewhat ironically and perhaps prophetically, Jamie Gladue's own victimization, evident in the

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By Katie Scrim, Research Officer in the Research and Statistics Division of the Department of Justice Canada.  
*Available online:* <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p3.html>>

<sup>289</sup> Canadian Human Rights Commission, *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Minister of Public Works and Government Services Canada, 2003) at 6, online: CHRC < <https://www.chrc-ccdp.gc.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-services-federally>>.

<sup>290</sup> Levy-Pounds, Nekima. "From the Frying Pan into the Fire: How Poor Women of Color and Children are Affected by Sentencing Guidelines and Mandatory Minimums." *Santa Clara Law Review*, 2007, v.47 at 288.

<sup>291</sup> Ontario Human Rights Commission. *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare*. (April 2018). *Available online:* <[http://www.ohrc.on.ca/en/news\\_centre/ohrc-releases-report-its-inquiry-over-representation-indigenous-and-black-children-ontario%E2%80%99s-child](http://www.ohrc.on.ca/en/news_centre/ohrc-releases-report-its-inquiry-over-representation-indigenous-and-black-children-ontario%E2%80%99s-child)>

<sup>292</sup> *R v Gladue* [1999] 1 SCR 688.

trial transcripts, is completely erased from the 1999 judgment and she never received the benefit of a so-called Gladue report. While Gladue reports are intended to address inequities created by the impacts of colonization, they do little to address the upstream causes—poverty, violence, homelessness—of Indigenous women’s criminalization and have in no way reduced the number of Indigenous women sentenced to prison. In fact, the numbers of federally sentenced Indigenous women have increased from 18% to 40% between 2001 and 2016.<sup>293</sup> Worse still, as the former Correctional Investigator Howard Sapers has noted, at times the Gladue report worsens the conditions of their confinement as CSC takes the analysis of their histories of poverty and abuse and translates them into risk factors.<sup>294</sup>

Further, due to the lack of a national framework, there are no guidelines federally or provincially on who can produce these costly reports and there are not enough trained Indigenous Gladue writers across the country. The impacts of colonization ought to be taken into consideration well ahead of the criminal justice system in order to invest in communities.

### Inside Prison

Currently, the prisons for women are comprised of a general population, mostly those with medium security and some minimum security designations, who are kept in living units with up to 10-11 women. The vast majority of programming, employment, healthcare, and mental health services take place in this section of the prison—General Population. More recently, minimum security units were developed, which are positioned outside of the barbed wire fence, although somewhat ironically are based on a blueprint for maximum security units. The women we work with adeptly refer to the minimum security units as “max lite”, and many resist being moved there for reasons which will be discussed below.<sup>295</sup>

Finally there are the Secure Units, which are isolated, cut off from the general population; they contain maximum security cells as well as solitary confinement cells; the only difference between the two being that the maximum security cells have access to a larger yard area 1 hour a day and a small common area shared with three to five other women. Women classified as maximum security are confined to those cells and that small common area, which contains a TV, couch, table, fridge, and washing machine, often for 23 hours a day. When there is a lockdown, often a monthly occurrence, women in the secure units are confined entirely to their cells and are denied access to programs, school, mental health supports and sometimes even showers. Typically the women do not know when the lockdown will end.

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<sup>293</sup> Office of the Correctional Investigator, Annual Report 2017/18, available online: <http://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>.

<sup>294</sup> Office of the Correctional Investigator, Annual Report 2015/16, available online: <http://www.ocibec.gc.ca/cnt/rpt/annrpt/annrpt20152016-eng.aspx>

<sup>295</sup> The content of this brief related directly to first-person accounts is drawn from the monthly reports produced by the CAEFS Regional Advocate teams.

The environment in the Secure Units is highly punitive, repressive and controlling. This was documented heavily in the past two Annual reports of the Correctional Investigator.<sup>296</sup> All aspects of life in the secure units are controlled; from the time women eat to the programs they access to whether they will be invasively strip searched is managed to a large degree by the secure unit Correctional Manager, a concentration of power which women commonly report is abused.<sup>297</sup>

Women in maximum security, unlike men, are subject to a further classification system, known as the levels system and described by the Correctional Investigator as a sex-based discriminatory restriction that punishes or rewards women, on the basis of a set of expected or compliant behaviours.<sup>298</sup> Women must earn their way out of the oppressive conditions of the secure unit to the general population through three graduated levels, each with differing restrictions and “privileges”. For example, women who score as a “1” or “2” on the levels system may be shackled, including with leg irons and handcuffs, to visit with their families and children. Due to this policy, at the Grand Valley Prison for Women, the number of women allowed to visit family at one time has been restricted. In addition, a number of women have reported cancelling visits because they did not want their children to see them shackled in this way.<sup>299</sup>

Because the levels system exists outside the law, and the rules are applied arbitrarily, women often feel helpless, unable to “earn” a level which will enable them access to the general population where most programming takes place. Women commonly report the ease with which they “lose levels” and accompanying “privileges” and the great difficulty they experience in trying to “earn” their return to less restrictive prison conditions. Women rewarded with the highest level often report being treated in the same way as those with lower levels and fail to accrue the apparent benefits of this higher designation.

Last year, following an extensive review of the secure units, the Correctional Investigator called the levels system tantamount to the illegal former Management Protocol and called for the practice to be ended.<sup>300</sup> The Management Protocol, which held women in segregated conditions forcing them to earn certain privileges (things for which they were, in fact, legally entitled to), was rescinded following years of advocacy and recommendations from the Correctional Investigator and CAEFS, only to be reborn as the levels system.<sup>301</sup> CSC recently conducted its own review of the levels system and determined that it would not be able to “safely” manage women classified as max, the women themselves would not be able to access services in the GP, and that there would be little incentive for prisoners to transition to medium security without the levels

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<sup>296</sup> Office of the Correctional Investigator, Annual Report 2017/18, available online: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>.

<sup>297</sup> CAEFS Regional Advocate Reports.

<sup>298</sup> Office of the Correctional Investigator, Annual Report 2016/17, available online: <<http://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>>.

<sup>299</sup> CAEFS Regional Advocate Reports.

<sup>300</sup> Office of the Correctional Investigator, Annual Report 2016/17, available online: <<http://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>>.

<sup>301</sup> Correctional Service of Canada, Deputy Commissioner for Women, Memorandum (April 2011). Available upon request from CAEFS.

system, and on this basis decided it was needed; these conclusions are deserving of interrogation.<sup>302</sup> If any lessons are to be taken from this example, we hope the need for meaningful, independent and binding oversight of CSC's decision-making shines through.

### Indigenous women over-classified and segregated

Of the women isolated in the oppressive conditions of maximum security and segregation, 50% are Indigenous.<sup>303</sup> During an advocacy visit to FVI in May 2018, our advocacy team observed that 100% of the women in the secure unit were Indigenous.

The tool used by CSC to assess women's security levels when they first enter the prison, The Custody Rating Scale, was developed over 25 years ago on a sample of white male prisoners.<sup>304</sup> CSC's own research has documented that the CRS does not accurately assess the so-called risks posed by women prisoners. In 2003, the CHRC confirmed in its report, "Protecting Their Rights," that CSC's classification scheme discriminates against women on the basis of sex, race and disability and that most Indigenous women are over classified and therefore unable to access programming, recreational and other services and conditional release.<sup>305</sup>

To date, CSC has made no changes to the CRS or the way it is used on women and women, particularly Indigenous women, continue to be over-classified. A 2017 report of the Auditor General, found that CSC frequently overrode the results of this faulty tool. Rather than override it in order to lower women's security, however, staff placed twice as many women prisoners in higher levels of security than recommended by the tool.<sup>306</sup> In other words, the issue of Indigenous women's over-classification is likely due not just to a discriminatory tool, but also to discriminatory attitudes on the part of correctional staff. In fact, in 2017, the Supreme Court of Canada recognized that Indigenous women are among the most vulnerable to discrimination within corrections.<sup>307</sup>

The impact of over-classification cannot be overstated. The Superior Court of British Columbia recently accepted that self-injury and suicide are more common in "isolated, punitive housing

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<sup>302</sup> Correctional Service of Canada, Review of Policy Framework, November 2018. Available online: <<http://www.csc-scc.gc.ca/aboriginal/002003-1016-en.shtml>>

<sup>303</sup> Native Women's Association of Canada, Indigenous Women in Solitary Confinement (August 2017). Available online: <<https://www.nwac.ca/wp-content/uploads/2017/07/NWAC-Indigenous-Women-in-Solitary-Confinement-Aug-22.pdf>>

<sup>304</sup> Correctional Service of Canada, Commissioner's Directive 705-7: Security Classification and Penitentiary Placement. Available online: <<http://www.csc-scc.gc.ca/acts-and-regulations/705-7-cd-eng.shtml>>

<sup>305</sup> Canadian Human Rights Commission, Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women (Ottawa: Minister of Public Works and Government Services Canada, 2003) at 32. Available online: CHRC <<https://www.chrccdp.gc.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-servicesfederally>>.

<sup>306</sup> 2017 Fall Reports of the Auditor General of Canada to the Parliament of Canada, Report 5—Preparing Women Offenders for Release—Correctional Service Canada, available online: <[http://www.oagbvg.gc.ca/internet/English/parl\\_oag\\_201711\\_05\\_e\\_42670.html#>](http://www.oagbvg.gc.ca/internet/English/parl_oag_201711_05_e_42670.html#>).

<sup>307</sup> *Ewert v Canada*, 2018 SCC 30, at para. 54.



units” with “severely restricted living conditions,”<sup>308</sup> much like those described above. The Superior court further found that the “permanent harm” of segregation, “prevents the [prisoner] from successfully readjusting to the broader social environment of general population in prison and...often severely impairs the [prisoner’s] capacity to reintegrate into the broader community.”<sup>309</sup> Women segregated in the secure units similarly struggle in adjusting to the general population and the broader community after being kept in the isolated conditions of maximum security pods for months or years. It is not uncommon for a woman to be released to the general population only to be returned to maximum security, sometimes first through solitary confinement, due to difficulties in adjusting to the increased stimuli and social interaction. In some instances, women are released directly from maximum security to community, thereby seriously compromising their chances of success.

### CAEFS’ Recommendations

It is clear from our work and the Inquiry’s proceedings that any meaningful and authentic recommendations must come from the communities most affected. First Nations, Métis, and Inuit communities must be engaged in the process of re-envisioning a system of justice that reflects their contemporary practices, beliefs and cultures. They must also be given the funding to support community-led solutions to prevention and rehabilitation associated with crime.

In partnership, and as an Indigenous ally, CAEFS respectfully submits the following five recommendations based on our experience within the federal prison system for women on how to address the over-incarceration of Indigenous women in Canada. While we rely on Indigenous to cover all First Nations, Inuit, Métis, status and non-status Indigenous women it is essential to note that six-in-ten (61%) women reported being First Nations, almost a third (32%) identified as Métis, and 4% reported Inuit identity.<sup>310</sup>

#### *Recommendation 1 - Decarceration*

There is an urgent need for more community release options for Indigenous women. The lack of available options is not as much due to the legislation as it is to policy decisions which have compromised the effect of the legislation. The CCRA is set up to facilitate community release.

The intent of sections 81 and 84 of the CCRA was to afford Indigenous communities greater control over matters affecting them.<sup>311</sup> These provisions are broad, allowing for creative, flexible and individualized community-based solutions. At the same time that Indigenous women are being over-classified, CSC policy also restricts s. 81 agreements to those classified as minimum security. As a result, when the first CSC healing lodge was built for Indigenous women, 90% of

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<sup>308</sup> RFJ at para. 186 (emphasis added).

<sup>309</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62.

<sup>310</sup> Trovato, Frank and Laura Aylsworth. "Demography of Indigenous Peoples in Canada". The Canadian Encyclopedia, 17 January 2018, Historica Canada. <https://www.thecanadianencyclopedia.ca/en/article/aboriginal-people-demography>. Accessed 27 November 2018.

<sup>311</sup> *Corrections and Conditional Release Act*, SC 1992, c 20

them did not qualify for it. In fact, s. 81 does not require a healing lodge or other institution be built at all and this restricted reading of the provision can create major barriers for Indigenous communities interested in undertaking a s.81 agreement.

Funding parity for community-driven section 81's and 84's is also required. There continues to be substantial funding discrepancies, as well as differences in terms and conditions of work, between Section 81 Healing Lodges operated by Indigenous communities and those operated by CSC. In fact, in its report "Spirit Matters", the OCI indicates that CSC diverted s. 81 funding meant for Indigenous communities to prison-based programs like the pathways houses.<sup>312</sup> Women with mental health needs can and should be transferred to community-based treatment facilities using section 29 of the CCRA. In 2013, recommendations to increase community treatment capacity for complex mental health cases were made in the Inquest Touching the Death of Ashley Smith.<sup>313</sup>

A fundamental re-evaluation of the CSC policies, such as those restricting s. 81 agreements, by an independent body to ensure their compliance with the CCRA is needed. Given CSC's history of resistance to meaningfully implement recommendations from outside bodies, where CSC policies do not comply with the CCRA, there should be a mechanism through which to enforce compliance.

The current cost to incarcerate an Indigenous woman on average is 192 000 a year. This figure can increase to 400 000 for segregation or specialized units.<sup>314</sup> The fiscal cost of incarceration is monopolizing funds that could benefit First Nations, Métis, and Inuit communities.

### *Recommendation 2 - Judicial Oversight*

We urge the commission to consider the need for judicial oversight on all considerations relating to Indigenous women given the current rates of incarceration and over-classification. Following the Commission of Inquiry into Certain Events at the Prison for Women in Kingston nearly 22 years ago, Louise Arbour concluded that judicial oversight of corrections was required.<sup>315</sup>

Further, the committee should explore a remedial option, such as that recommended by the honourable Louise Arbour in her 1996 report, for prisoners whose conditions of confinement amount to correctional interference with their lawful sanction and therefore renders their sentence in need of remediation.

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<sup>312</sup> The Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: Minister of Public Works and Government Services Canada, 2012) at page 3, *available online* : <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022-eng.aspx>>.

<sup>313</sup> Ontario Chief Coroner, *Inquest Touching the Death of Ashley Smith* (December 2013). *Available online*: <<http://www.caefs.ca/wp-content/uploads/2014/01/A.S.-Inquest-Jury-Verdict-and-Recommendations1.pdf>>

<sup>314</sup> Correctional Service of Canada, *Key Facts and Figures (2015-2016)*, *available online*: <<http://www.csc-scc.gc.ca/publications/005007-3024-eng.shtml>>

<sup>315</sup> Public Works and Government Services Canada, 1996. *Commission of Inquiry into certain events at the Prison for Women in Kingston*, *available online*: <[http://www.caefs.ca/wp-content/uploads/2013/05/Arbour\\_Report.pdf](http://www.caefs.ca/wp-content/uploads/2013/05/Arbour_Report.pdf)>

### *Recommendation 3 - Mandatory Minimum Sentences*

Mandatory minimum sentences and parole ineligibility periods have a disproportionate impact on women, and in particular Indigenous women. Indigenous women are overrepresented among those sentenced to life. Mandatory minimum sentences deny judges the ability to consider lower levels of culpability, for example, in instances where an accused is party to a spouse's offence or where the accused was acting in relation to an offence against oneself or one's child. This is particularly relevant for women whose violent crimes are overwhelmingly defensive or otherwise reactive to violence directed at themselves, their children, or another third party. Senator Pate currently has tabled a bill S-251 which give a court the discretion to vary the punishment to be imposed in respect of an offence for which the penalty or different degrees or kinds of punishment is prescribed.<sup>316</sup> Mandatory minimums disproportionately impact indigenous women as it does not allow the court to structure sentencing based on the factors that have contributed to the women's criminalization.

### *Recommendation 4 - End the use of strip searching*

Strip searches are defined as the removal or rearrangement of some or all of the clothing of a prisoner so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts, or undergarments.<sup>317</sup> If the woman is menstruating, she may be required to remove her tampon in front of the officer supervising the strip search. Those who are in charge of prison security have seen that strip searches yield very little—if any—contraband and no weapons, but significantly traumatize women.

**CAEFS maintains that strip searching within the detention systems of Canada is state sanctioned sexual violence against women.** With 90% of Indigenous women reporting being survivors of physical, sexual or domestic abuse this federal government action effectively re-traumatizes women on a regular and consistent basis.<sup>318</sup> Women who have refused to comply with strip searching and lost their ability to visit with their own children as a result. Some women intentionally avoid applying for jobs or education - because they do not want to endure the trauma of being strip searched by the Correctional Service of Canada.

### *Recommendation 5 – End the use of Segregation*

End the use of segregation in all its forms. Segregation refers to the practice of confining a prisoner alone in any way for periods of time, however segregation is not merely a place. Prisoners in segregation, including in maximum security, do not have access to the main areas of

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<sup>316</sup> Senate Public Bill, S-251 An Act to amend the Criminal Code (independence of the judiciary) and to make related amendments. Sponsor, Senator Kim Pate (May, 2018). Available online: <<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9903593>>

<sup>317</sup> Correctional Service of Canada, Commissioner's Directive 566-7: Searching of Offenders. Available online: <<http://www.csc-scc.gc.ca/politiques-et-lois/566-7-cd-eng.shtml#s7>>

<sup>318</sup> Department of Justice. Aboriginal Victimization in Canada: A Summary of the Literature  
By Katie Scrim, Research Officer in the Research and Statistics Division of the Department of Justice Canada.  
Available online: <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p3.html>>

the prison where programs, yard, gym and education occur. Segregation can be any time the prison restricts a woman from meaningful human contact for any duration of time.<sup>319</sup>

Due to the mental and physical distress such segregation can cause, the practice can amount to cruel, inhuman and degrading punishment and as such should be categorized as institutional violence against women. Indigenous women who have almost all experienced some form of abuse (physical, sexual, domestic) are then overwhelmingly subject to the practice of segregation, an additional trauma against women enacted on behalf of the government of Canada.

## Conclusion

We respectfully urge the Inquiry to continue to acknowledge that the systemic factors that contribute to the incarceration of Indigenous women are the very same factors that place them at a higher risk for going missing or being murdered.

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<sup>319</sup> CAEFS. Brief for Status of Women Committee, Indigenous Women in Federal Justice (February, 2018). *Available upon request from CAEFS.*

## Appendix B: A Human Rights Claiming Mechanism of the National Action Plan

*On December 11, 2018, Dr. Pamela Palmater, Chair in Indigenous Governance, Ryerson University, delivered oral submissions to the National Inquiry into Missing and Murdered Indigenous Women and Girls ("the Inquiry") on behalf of the Canadian Feminist Alliance for International Action (FAFIA) and Partners, Canada Without Poverty, and Dr. Pamela Palmater ("the Coalition"). Commissioner Robinson requested clarification from Dr. Palmater on a human rights claiming mechanism. In particular, Commissioner Robinson asked whether the Coalition supports the position that a human rights commission specific to Indigenous women satisfies the requirement for a claiming mechanism under international human rights law.*

It is the Coalition's position that **a human rights commission specific to Indigenous women and girls does not alone satisfy Canada's obligations under international human rights law**. The National Action Plan must include its own rights-claiming mechanism so that Indigenous women and girls can bring forward systemic violations of rights—particularly where there are limited domestic legal remedies available, for example in the context of economic and social rights.

A claiming mechanism for the National Action Plan would complement the monitoring component. It is through rights-based claims that systemic discrimination can be identified and then addressed. The goal of this mechanism is to make the National Action Plan pro-active, participatory and to make the Plan come alive for Indigenous women and girls.

### Limited Scope of Human Rights Commissions and Tribunals

Existing federal, provincial, and territorial human rights commissions and tribunals can play a critical role in ensuring compliance with Canada's domestic human rights law, but there are significant gaps for those women whose identities and experiences of discrimination do not fall within the scope of human rights codes. Federal, provincial, and territorial human rights commissions and tribunals are restricted to addressing discrimination in three areas: accommodation, access to public services, and employment. Additionally, in many cases, the federal and subnational human rights codes which grant commissions and tribunals authority do not always capture the intersectional nature of discrimination for Indigenous women that creates and sustains violence based on grounds of discrimination such as socio-economic status when it intersects with race and sex.

Critically, many human rights codes struggle with the application of discrimination based on socio-economic status – a key component in the causation and exacerbation of violence against Indigenous women. In fact, even when an individual claim is applicable under the human rights legislation, Québec is the only province that prohibits discrimination expressly on the ground of

social condition.<sup>320</sup> And no human rights code or act in the country codifies socio-economic rights such as the right to adequate housing, food, or health. Additionally, existing human rights codes are not able to address international human rights specific to Indigenous women and peoples, for example to speak to equality rights in the context of First Nations treaties.

In addition, the Canadian statutory human rights system struggles to address the systemic nature and scope of discrimination against a group, such as Indigenous women. It is more comfortable with and effective at addressing individual complaints of discrimination than systemic patterns.

For Indigenous women living in poverty and facing violence, it is nearly impossible to ascertain by what means and mechanisms they can bring claims that allow them to speak of the intertwined facets of their experiences, which include violations of their economic and social rights. United Nations authorities, including the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights have repeatedly expressed concern to Canada that there are few forums for marginalized persons to claim their economic and social rights. Simply stated, there is nowhere for Indigenous women to seek a remedy for violations of their rights to an adequate standard of living, and the impacts that it has on their safety and well-being. As documented in the submission, violations of social and economic rights are intertwined with rights to equality, security, liberty and life. Without an avenue of recourse of this kind, the marginalization, colonialism, sexism, racism, and violence against Indigenous women will remain untouched.

The proposal of FAFIA and Partners, in the context of this particular mechanism, is not necessarily that these rights be made justiciable, but rather that Indigenous women and girls have access to a forum to have their voices heard when rights are violated, and when elements of the National Action Plan intended to address rights violations are not working to address systemic discrimination. The forum developed through this mechanism must allow legitimate systemic socio-economic concerns, as well as other systemic issues, to be raised and addressed with action by governments.

It is vital that the Inquiry be holistic in considering the barriers faced by Indigenous women who attempt to bring forward violations of their rights. The responsibility to provide forums and remedies to redress human rights violations lies with all governments, and with all departments within those governments. Concretely, at the federal level, this requires the National Action Plan to be co-developed in equal partnership with Indigenous women, their organizations and home communities in coordination with other relevant national strategies, such as the Employment and Social Development Canada's National Housing Strategy, the Canadian Poverty Reduction Strategy, and the Strategy to Prevent and Address Gender-Based Violence.

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<sup>320</sup> Ontario Human Rights Commission, "The Concept of 'Social Condition'", online: <<http://www.ohrc.on.ca/en/human-rights-commissions-and-economic-and-social-rights/social-condition-%E2%80%93-option-human-rights-commissions>>.

The mandate of the Minister of Justice to review litigation practices should also be implemented to support and feed into the National Action Plan so that litigation strategies used by the Government of Canada are reviewed to identify the ways in which litigation techniques used by government legal counsel, particularly in *Charter* cases dealing with poverty issues, contribute to sustaining the violence against Indigenous women and girls.

### Recommendations for a human rights claiming mechanism in a National Action Plan

FAFIA and Partners recognize the value of human rights commissions and tribunals, yet urge Commissioners to recommend an independent, adequately-funded, grassroots and Indigenous women-led claiming mechanism that has authority to make binding recommendations. The mechanism must be accessible and travel directly to Indigenous women and girls.

It must embrace the diversity of Indigenous women and be driven by those women. For example, this mechanism could include a council panel comprised of Inuit, Métis, and First Nations women representatives and/or situation specific council panels that are comprised of First Nations women for First Nation issues, who investigate claims of systemic discrimination – including those related to economic and social rights and Indigenous related rights – and prescribe binding remedies to all levels of government that are presented to the relevant Ministers in Parliament or legislatures. Those Ministers would be responsible for responding and acting on recommendations within stipulated time frames.

What is being proposed in this context will not do all the work of closing Canada's implementation gap – particularly the ability of Indigenous women to exercise rights guaranteed by international instruments to which Canada has agreed. Governments must consider all avenues to make these rights, particularly economic and social rights, fully accessible for Indigenous women. That being said, this mechanism, would allow women to have their voices heard, and responded to with binding recommendations. It is a powerful tool in ensuring systemic violations of Indigenous women's rights are identified directly by those women who are affected and addressed by governments with immediate action.

**Development of such a mechanism would require extensive involvement and consultation by Indigenous women experts on human rights, Indigenous rights and economic and social rights. However, the following elements must serve as a framework. A human rights mechanism for the National Action Plan must be:**

- **Framed with a mandate to implement international human rights instruments including the United Nations *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, the twin *International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social, and Cultural Rights (ICESCR)*, the *Convention on the Elimination of Racial Discrimination (CERD)*, and the *Declaration on the Rights of Indigenous Persons (UNDRIP)*;**
- **Inclusive of key elements of a human rights framework including a platform of non-discrimination and equality which recognizes economic, social, and cultural rights;**

- **Reflective of the diversity of experiences of First Nations, Métis, and Inuit women;**
- **Independent, accessible, welcoming, and trauma-informed;**
- **Have the power to prescribe remedies to all levels of government and overcome barriers of federalism;**
- **Supported by adequate funding; and**
- **Developed, implemented, and reviewed at a grassroots level with Indigenous women at the centre.**



## Appendix C: Statistics on Policing

Chart by Pamela Palmater adapted from statistical data provided by: (1) Marcoux, Jacques, Nicholson, Katie, “CBC Deadly Force: Police Involved Fatalities 2000-2017” (Toronto: CBC, March 30, 2018); and (2) Robyn Doolittle, “Unfounded: Why Police Dismiss 1 in 5 Sexual Assault Claims as Baseless” (London, ON: Globe and Mail, February 3, 2017).

AREA	INDIGENOUS % POPULATION	% INDIGENOUS PEERSONS KILLED BY POLICE AS PERCENTAGE OF ALL POLICE KILLINGS	UNFOUNDED SEXUAL ASSAULT RATES %
NU	85.6	100	32
NT	50.9	100	30
SK	15.1	62.5	19
MB	16	57.9	14
YT	23.6	50	25
NS	3.5	33.3	25
AB	6	15.5	18
Canada	4.1	15	20
BC	5.2	14.3	11
QC	1.7	9.2	17
ON	2.2	4.6	25
NB	3	0	32
NL	6.1	0	16
PEI	1.5	n/a	27