



NATIVE WOMEN'S  
ASSOCIATION OF CANADA  
L'ASSOCIATION DES FEMMES  
AUTOCHTONES DU CANADA

## Reply to Issue 17:

Implementation of CEDAW Recommendations from Article 8  
Inquiry on Missing and Murdered Indigenous Women and Girls

Submitted October 2016 by the  
Canadian Feminist Alliance for International Action (FAFIA) and  
Native Women's Association of Canada (NWAC)

## **Acknowledgments**

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## I. Introduction

This submission provides a brief documentation of observations and comments issued by international and regional human rights bodies *since* the release of the 2015 Inquiry Report, as well as significant domestic events and political changes. The submission also comments on the implementation of the CEDAW recommendations set out in issue 17.

In its 2015 Inquiry Report on missing and murdered Indigenous women and girls, the CEDAW Committee found Canada in violation of the *Convention* and made 38 recommendations.<sup>1</sup> The CEDAW Report's findings and recommendations followed the release of a report with similar findings and recommendations from the Inter-American Commission on Human Rights on missing and murdered Indigenous women and girls in British Columbia, Canada.<sup>2</sup>

In its List of Issues for Canada's eighth and ninth periodic review, the Committee requested information about the implementation of the recommendations contained in the CEDAW Report, including measures taken to implement the recommendations and how monitoring and effective oversight are ensured.<sup>3</sup>

In particular, the Committee requested information about the status of the implementation of four recommendations:

- 1) Take measures to establish a national public inquiry into cases of missing and murdered Indigenous women and girls that must be fully independent from the political process and transparent, with terms of reference to be developed and a commissioner to be selected based on the views of representatives of Indigenous communities in the provinces, territories and National Aboriginal Organizations;
- 2) Ensure that all cases of missing and murdered women are duly investigated and prosecuted;

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<sup>1</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*, UN Doc CEDAW/C/OP.8/CAN/1, 6 March 2015, online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>> (see paras 13-20 for background on the Inquiry procedure) [CEDAW Inquiry Report].

<sup>2</sup> Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia*, OEA/Ser.L/V/II, 21 December 2014 [IACHR Report].

<sup>3</sup> Committee on the Elimination of Discrimination against Women, *List of issues in relation to the combined eighth and ninth periodic reports of Canada*, UN Doc CEDAW/C/CAN/Q/8-9, 16 March 2016 at para 17.

- 3) Take comprehensive measures to significantly improve the socioeconomic conditions of the Indigenous community, including the particular conditions affecting Indigenous women both on- and off-reserve; and
- 4) Take specific measures to break the circle of distrust between the authorities and the Indigenous community, improve avenues of communication and engage in a meaningful dialogue with representatives of the Indigenous community.<sup>4</sup>

## II. Recent UN Treaty Body Comments and IACHR Follow-Up Hearing

### (i) Human Rights Committee and Committee on Economic, Social and Cultural Rights Periodic Reviews of Canada in 2015 and 2016

Canada was reviewed by the Human Rights Committee in July 2015, and by the Committee on Economic, Social and Cultural Rights in February 2016. FAFIA and NWAC made a joint submission to the Human Rights Committee<sup>5</sup> and FAFIA addressed the issue of murders and disappearances of Indigenous women and girls in its general submission to the Committee on Economic, Social and Cultural Rights.<sup>6</sup>

Both Committees made pertinent recommendations to Canada in their concluding observations.

The Human Rights Committee called on Canada:

as a matter of priority, [to] (a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women's organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators

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<sup>4</sup> *Ibid* (see also CEDAW Inquiry Report, *supra* note 1 at para 216(i), 216 D.(i), 216 B.(i), 216C.(i)).

<sup>5</sup> Canadian Feminist Alliance for International Action and Native Women's Association of Canada, "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" (June 2015), online: <[http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/INT\\_CCPR\\_CSS\\_CAN\\_20769\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/INT_CCPR_CSS_CAN_20769_E.pdf)>.

<sup>6</sup> Canadian Feminist Alliance for International Action, "Women's Economic, Social and Cultural Rights in Canada: 2015-2016" (February 2016), online: <[http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CAN/INT\\_CESCR\\_CSS\\_CAN\\_22935\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CAN/INT_CESCR_CSS_CAN_22935_E.pdf)>.

and provide reparation to victims; and (d) address the root causes of violence against indigenous women and girls.<sup>7</sup>

The Human Rights Committee asked Canada to provide information on the implementation of the above recommendation within one year—by August 2016.<sup>8</sup>

In its 2016 periodic review of Canada, the Committee on Economic, Social and Cultural Rights noted its concern “about the persistence of violence against women in the State party, which is particularly prevalent among indigenous women and girls and further exacerbated by the economic insecurity of women”.<sup>9</sup> The Committee recommended that:

the State party address violence against women and girls in a holistic manner. Inter alia, the State party is encouraged to study the link between poverty, ethnic origin and vulnerability to violence and take effective measures aimed at preventing and eradicating violence against women and girls. The Committee also recommends that the State party step up its efforts to protect victims of violence, including by ensuring the availability of a sufficient number of adequate shelters for victims of violence, as well as long-term housing solutions and adequate social assistance.<sup>10</sup>

Canada has not formally responded to these concluding observations.

## (ii) Inter-American Commission on Human Rights (IACHR) Follow-Up Hearing

On April 7, 2016, the IACHR held a follow-up hearing in Washington D.C to evaluate Canada’s progress on implementing the recommendations in the IACHR report on missing and murdered Indigenous women and girls in British Columbia.

FAFIA and NWAC representatives participated in this hearing along with Government of Canada representatives and the UN Special Rapporteur on violence against women. At this hearing, the Government of Canada stated that actions are being taken that are giving effect to the recommendations of the CEDAW Committee and the IACHR.<sup>11</sup>

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<sup>7</sup> Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6 (13 August 2015) at para 9, online: <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCAN%2FCO%2F6](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCAN%2FCO%2F6)>.

<sup>8</sup> *Ibid* at para 21.

<sup>9</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Canada*, UN Doc E/C.12/CAN/CO/6 (23 March 2016) at para 33, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/062/37/PDF/G1606237.pdf?OpenElement>>.

<sup>10</sup> *Ibid* at para 34.

<sup>11</sup> Government of Canada, Canada’s National Response to the Inter-American Commission on Human Rights’ Report on Missing and Murdered Indigenous Women in British Columbia, Canada, Follow-Up Hearing, Inter-

### III. Domestic Developments

#### (i) New Government

In October 2015, a new federal government assumed power – ending a 10-year period of Conservative federal governments led by Stephen Harper. The Liberal Party of Canada is now the governing federal party under the leadership of Prime Minister Justin Trudeau. The current federal government has expressed its commitment to a new nation-to-nation relationship with Indigenous peoples. The tone of the current government is positive. This is a welcome change.

#### (ii) Second Roundtable on Missing and Murdered Indigenous Women and Girls

On February 26, 2016, a second national roundtable was held to determine outcomes and priorities for action to prevent and address violence against Indigenous women and girls. Attendees included families, Premiers, federal, provincial and territorial Ministers, and Indigenous groups from across the country. Participants agreed to develop a prevention and awareness campaign aimed at ending violence against Indigenous women and girls.

The federal, provincial, and territorial governments committed to using their respective reporting and accountability mechanisms to report on their activities and progress. They also committed to enhanced public reporting, and sharing information on effective collaboration efforts both within and across jurisdictions, organizations and communities.<sup>12</sup>

#### (iii) Canada endorses the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

On 9 May 2016, the Government of Canada announced that it fully supports UNDRIP,<sup>13</sup> and the Prime Minister asked the Minister of Indigenous and Northern Affairs and other Ministers to fully implement its provisions.<sup>14</sup> Article 18 of UNDRIP is particularly important for Indigenous

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American Commission on Human Rights, Washington, DC, 7 April 2016, online:  
<<https://www.youtube.com/watch?v=mOPyAG3kXd4>> [IACHR Follow-Up Hearing].

<sup>12</sup> NWAC, National Roundtable on Missing and Murdered Indigenous Women and Girls: Outcomes and Priorities for Action to Prevent and Address Violence Against Indigenous Women and Girls, February 2016 at 6, online:  
<<https://nwac.ca/2016/03/3120/>>.

<sup>13</sup> Indigenous and Northern Affairs Canada, Statement on the United Nations Declaration on the Rights of Indigenous Peoples, online: <<https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958#a2>>.

<sup>14</sup> *Ibid.*



women because it states that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves...”<sup>15</sup>

#### (iv) Promise of Increased Engagement and Consultation with Indigenous people with a Nation-to-Nation Framework

The Government of Canada has promised to increase its engagement with Indigenous peoples. It has included in the mandate letters for Ministers the requirement to initiate a new nation-to-nation relationship with Indigenous peoples.<sup>16</sup> However, to date, engagement processes have had short-time frames, no new investments to build capacity to engage, and the interpretation of nation-to-nation has excluded Indigenous women from some tables.

### IV. Status Update on the Implementation of CEDAW Recommendations

#### (i) CEDAW Recommendation: National Inquiry into Missing and Murdered Indigenous Women and Girls

***The Government of Canada has implemented this recommendation***, an extremely important one. After a pre-consultation inquiry process, a National Inquiry was launched on September 1, 2016. The Government of Canada has allocated \$53.86 million for the national inquiry, which is required to complete its work by the end of 2018.<sup>17</sup>

Launching the National Inquiry is an important step forward in recognizing the deeply rooted and deadly discrimination that Indigenous women and girls face in Canada. However, as organizations that have advocated for many years for the establishment of this inquiry, FAFIA and NWAC have some concerns about the Inquiry’s mandate and terms of reference.<sup>18</sup>

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<sup>15</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Article 18, online: <[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)>.

<sup>16</sup> Mandate Letter, Minister of Indigenous and Northern Affairs Canada, November 2015, online: <<http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter>>.

<sup>17</sup> Government of Canada, *Federal Budget, 2016*, online: <<http://www.budget.gc.ca/2016/docs/plan/toc-tdm-en.html>>.

<sup>18</sup> NWAC, Press Release, “Government of Canada Officially Launches National Inquiry into Missing and Murdered Indigenous Women and Girls” (3 August 2016), online: <<https://nwac.ca/2016/08/press-release-government-of-canada-officially-launches-national-inquiry-into-missing-and-murdered-indigenous-women-and-girls-mmwig/>>; FAFIA, Amnesty International, Chair in Indigenous Governance at Ryerson University, Press Release, *Statement on Draft Terms of Reference for the National Inquiry* (20 July 2016), online: <<http://fafia-afai.org/wp-content/uploads/2016/07/Statement-on-National-Inquiry-20-July-2016FINAL.pdf>> [Statement on Draft ToR].

The Inquiry Terms of Reference (ToR)<sup>19</sup> fall short in the following ways:

### **1) No requirement to use a human rights framework**

The CEDAW and IACHR reports are listed in the ToR for the Commissioners to review and consider in making their findings. However, the Commissioners are not directed to assess the evidence regarding systemic causes of the violence or institutional practices in light of Canada's international human rights obligations, or to make recommendations that will ensure fulfillment of the rights of Indigenous women and girls. Nor do the terms of reference direct the Commissioners to design a plan for the implementation of CEDAW recommendations as part of its work.

The FAFIA/NWAC/Canadian Journal of Women and the Law Symposium, which included international experts from the UN, CEDAW Committee, and IACHR, recommended that the Inquiry be grounded in a human rights framework.<sup>20</sup> The Canadian Human Rights Commission made the same recommendation.<sup>21</sup> But the terms of reference do not mandate this.

### **2) No explicit reference to police and the criminal justice system**

There is no explicit mandate to review policing policies and practices. Since the failure of the police and the justice system to adequately protect Indigenous women and girls and to respond quickly and diligently to the violence is a central concern, and since this failure has been identified as a violation of Canada's obligations under international human rights law, the absence of explicit reference to this critical aspect of the discrimination has caused serious concern.

The Government of Canada has stated that the language of the terms of reference is broad enough to include policing and the justice system, and examination of them is intended to be

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<sup>19</sup> Indigenous and Northern Affairs Canada, "Terms of Reference for National Inquiry into Missing and Murdered Indigenous Women and Girls" (2016), online: <<https://www.aadnc-aandc.gc.ca/eng/1470422455025/1470422554686>>.

<sup>20</sup> FAFIA, NWAC, Canadian Journal of Women and the Law, *22 Recommendations for a National Inquiry on Missing and Murdered Indigenous Women and Girls* (2016), online: <[http://fafia-afai.org/wp-content/uploads/2016/02/MMIWinquiryrecommendationFINAL\\_English.pdf](http://fafia-afai.org/wp-content/uploads/2016/02/MMIWinquiryrecommendationFINAL_English.pdf)>; Canadian Human Rights Commission, *Submission by the Canadian Human Rights Commission to the Government of Canada Pre-Inquiry Design Process: A Human Rights Violation Requires A Human Rights-Based Inquiry*, online: <<http://www.chrc-ccdp.gc.ca/eng/content/submission-canadian-human-rights-commission-government-canada-pre-inquiry-design-process>> [CHRC, *Submission*].

<sup>21</sup> CHRC, *Submission*, *ibid*.

included. FAFIA and NWAC remain concerned that inquiry into policing and prosecution matters may be disputed or weakened because the ToR are not explicit.<sup>22</sup>

### 3) No mechanism for independent review of cases

There is no mechanism for independent review of individual cases where there are outstanding concerns over the adequacy or impartiality of police investigations. The Inquiry Commissioners are authorized to refer families with concerns about ongoing or past investigations to “the appropriate provincial or territorial authority responsible for the provision of victim services”. This appears to be sending families back in a circle, to the same authorities with whom they were/are having problems to start with. An independent review of individual cases should be available through an independent process which the Commissioners design and oversee, at least initially.<sup>23</sup>

### 4) Not yet a national inquiry

Until all provinces and territories pass Orders-In-Council adopting the same terms of reference, and appointing the same Commissioners, under provincial and territorial inquiries acts, this inquiry is a federal inquiry, operating under the federal *Inquiries Act*;<sup>24</sup> it is not a national inquiry. Without provincial and territorial Orders-In-Council, the Commissioners do not have the authority to summon witnesses, compel production of documents, or investigate matters that are within provincial or territorial jurisdiction. Since policing and many relevant social programs fall within provincial and territorial jurisdiction, this authority is critical to the Inquiry’s ability to be effective.

As of the date of filing this submission, FAFIA and NWAC could only confirm that Ontario has passed the necessary Orders-In-Council.<sup>25</sup> This means that the Inquiry is not yet a national inquiry.

### 5) Inadequate participant and witness supports

There is no explicit provision made for translation/interpretation to/from Indigenous languages. Further, it is not clear whether individuals or groups testifying before the Inquiry will be provided with funded legal counsel if they need it. Nor is it clear that the Commission will be able to provide counseling and other supports to family members and witnesses who may need them *prior to* or *after* participating in the Commission process. The supplementary victim services for inquiry participants, which are being funded through the Department of Justice, are

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<sup>22</sup> Statement on Draft ToR, *supra* note 18.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Inquiries Act*, RSC, 1985, c I-11.

<sup>25</sup> Ontario, Order in Council, 6 September 2016, online: <<https://news.ontario.ca/mag/en/2016/9/order-in-council-3.html>>.

being administered by provincial and territorial Ministries of Justice with no common understanding of trauma-informed services.

## 6) No role for Indigenous women's organizations in the Inquiry

Apparently reflecting the Government of Canada's understanding of nation-to-nation relationship, discussions on the Inquiry, including who would be Commissioners, were held with the three male-dominated Indigenous national organizations: Assembly of First Nations; Inuit Tapariirit Kanitami and Métis Council of Canada. One of the results was a political outcry from Pauktuutit, the Inuit women's organization, when a non-Inuk woman was appointed as a Commissioner and no Inuk woman was appointed.<sup>26</sup> NWAC has no formal or informal relationship with the Inquiry, despite NWAC's 11 years of research through Sisters in Spirit, advocacy for an Inquiry and relationship building with families and allies. Nor do women's organizations with expertise in human rights and male violence against women have any formal or informal relationship with the Inquiry.

As a result, FAFIA and NWAC welcome the launch of the National Inquiry and are committed to assisting the Commissioners. However, we have serious concerns at the outset about the Inquiry's capacities and direction.

### (ii) CEDAW Recommendation: Ensure that all cases of missing and murdered Indigenous women are duly investigated and prosecuted

***This recommendation has not been implemented.*** Necessary components for implementation, including reliable data collection, standard protocols for missing women investigations, effective, enforceable standards for police engagement with Indigenous women and girls and family members, and reliable prosecution and informed adjudication of violence against Indigenous women, are not in place.

#### 1) No consistent and reliable data collection

It has been noted repeatedly, by Canadian and international human rights experts, that Canadian data on missing and murdered Indigenous women and girls is not complete or reliable. According to the RCMP, there is error and imprecision in reporting the number of cases due to the extensive period of time over which data has been collected, differing data interpretation, inconsistency of variables used over the review period, and multiple data

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<sup>26</sup> Pauktuutit Inuit Women of Canada, *Pauktuutit Statement on the National Inquiry on Missing and Murdered Women* (22 July 2016), online: <<http://pauktuutit.ca/pauktuutit-statement-on-the-national-inquiry-on-missing-and-murdered-indigenous-women/>>.

sources (with different purposes, collection methodologies, and definitions).<sup>27</sup> Although the RCMP issued reports in 2014 and 2015, which provided total numbers exceeding previous public estimates of murders and disappearances, and exceeding the RCMP's own previous figures,<sup>28</sup> there are significant problems with this RCMP data.<sup>29</sup> The FAFIA/CASAC report on violence against women, submitted for this review, provides further information on weaknesses in data on violence against Indigenous women and girls.

So far, there is no co-ordinated plan for standardized and mandatory data collection on missing and murdered Indigenous women and girls. Until there are standardized data collection methods across police jurisdictions and required reporting of a victim's ethnicity—Indigenous or otherwise—Canada cannot ensure that all cases of missing and murdered Indigenous women and girls are identified, or duly investigated and prosecuted.

## **2) No standardized, co-ordinated protocols for all police forces to follow when Indigenous women and girls are reported missing**

CEDAW called upon Canada to ensure that all police agencies follow standardized, mandatory protocols when responding to cases of missing and murdered Indigenous women. However, as noted by the Royal Canadian Mounted Police (RCMP) in its 2015 Operational Overview, the definition of a “missing person” and reporting protocols vary across police jurisdictions.<sup>30</sup>

The RCMP, which is one police force among hundreds in Canada, has published a National Missing Persons Strategy.<sup>31</sup> However, the Action Plan promised by this Strategy has not been developed, or made public.<sup>32</sup>

## **3) No consistent standard of conduct that is transparent and enforceable for police when engaged with Indigenous women and girls**

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<sup>27</sup> RCMP, *Missing and Murdered Aboriginal Women: 2015 Update to the National Operational Overview* (January 2015) at 3, online: <<http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-2015-update-national-operational-overview>> [RCMP 2015 Update].

<sup>28</sup> RCMP, *Missing and Murdered Aboriginal Women: An Operational Overview* (May 2014), online: <[http://ywcacanada.ca/data/research\\_docs/00000310.pdf](http://ywcacanada.ca/data/research_docs/00000310.pdf)>; RCMP 2015 Update, *ibid*.

<sup>29</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>>.

<sup>30</sup> RCMP 2015 Update, *supra* note 27 at 17.

<sup>31</sup> RCMP, “National Missing Persons Strategy” (2016), online: <<http://www.rcmp-grc.gc.ca/en/rcmp-national-missing-persons-strategy>>.

<sup>32</sup> Access to Information request made in July 2016, to determine if Indigenous women are taken into consideration in the Action Plan; currently we are not in receipt of a government response.

There are currently neither standards nor procedures, that are consistent and co-ordinated across jurisdictions, and that are effective in ensuring that Indigenous women and girls, and their family members and friends, do not face discriminatory, racist and sexist treatment by police and in the justice system. Standards of conduct for policing are usually incorporated into provincial and territorial police acts, but procedures for enforcing these standards are weak, not independent, and inaccessible.

**(iii) CEDAW Recommendation: Take comprehensive measures to significantly improve the socioeconomic conditions of the Indigenous community, including the particular conditions affecting Indigenous women both on- and off-reserve**

***This recommendation has not been implemented.*** Data on the socio-economic conditions of Indigenous women and girls are provided in the CAEFS/Chair in Indigenous Governance/FAFIA report on Indigenous Women and Women in Detention.

### **1) No coherent plan or strategy**

To date, there is no coherent plan or strategy to address the poverty of Indigenous women and girls, or their lack of access to decent housing, adequate and non-discriminatory child welfare and child protection services, legal aid, shelters, and other basic needs. The Government of Canada has not restored the core funding to the Native Women's Association that was lost under the previous government; but there have been 20 requests for consultation and presentations from the Government of Canada to NWAC between July 1<sup>st</sup> and September 15<sup>th</sup>, 2016. There has been no process or engagement that would set in place a discussion around a coherent plan or strategy for Indigenous women with Indigenous women being included. Current federal initiatives appear to be reactive to Ministers' mandate letters and include unrealistic deadlines. While it is important for the Government of Canada to move quickly, the current approach does not facilitate holistic and inclusive planning that takes Indigenous women's needs and perspectives into account.

### **2) Budgetary allocations unclear**

In March 2016, the Government of Canada announced it will invest \$8.4 billion dollars over five years in the areas of education, infrastructure, training and other programs for Indigenous peoples. However, it is not clear how the funds will be allocated and whether they will directly improve Indigenous women's socioeconomic conditions. The budget allocation does not address poverty, food security, housing, or education and employment strategies specifically focused on Indigenous women.

Further, there are no specific measures taken to increase access to health services, including mental health services, drug dependency treatment, and safe drinking water.

### **3) Insufficient funds for child welfare services on reserves**

There continues to be a disproportionately high number of Indigenous children institutionalized, or taken away from their families, by child welfare authorities.<sup>33</sup> The discrimination inherent in Canada's child welfare system, across all jurisdictions, has been recognized as a root cause of the violence experienced by Indigenous women and girls.<sup>34</sup> Research demonstrates that there is a strong correlation for Indigenous girls between being taken into care and becoming sexually exploited and involved in prostitution.<sup>35</sup>

Although the Canadian Human Rights Tribunal has ruled that the underfunding of on-reserve child welfare services violates the *Canadian Human Rights Act*,<sup>36</sup> the Government of Canada has not allocated the necessary funding to provide equal child welfare services to children on reserve,<sup>37</sup> and has failed to comply with the Tribunal's rulings.<sup>38</sup>

**(iv) CEDAW Recommendation: Take specific measures to break the circle of distrust between the authorities and the Indigenous community, improve avenues of communication and engage in a meaningful dialogue with representatives of the Indigenous community**

***This recommendation has not been implemented.***

### **1) Police brutality against Indigenous women and girls**

In 2013, Human Rights Watch found that women in northern British Columbia were harassed, threatened, raped and beaten by police.<sup>39</sup> Human Rights Watch reported eight incidents in which police physically assaulted or used questionable force against girls under the age of 18.<sup>40</sup>

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<sup>33</sup> Statistics Canada, *Living arrangements of Aboriginal children age 14 and under* (2011), online: <<http://www.statcan.gc.ca/daily-quotidien/160413/dq160413a-eng.htm>>.

<sup>34</sup> NWAC, *What Their Stories Tell Us: Research findings from the Sisters in Spirit Initiative* (2010), online: <<https://nwac.ca/wp-content/uploads/2015/07/2010-What-Their-Stories-Tell-Us-Research-Findings-SIS-Initiative.pdf>>.

<sup>35</sup> *Ibid* at 10.

<sup>36</sup> *First Nations Family and Child Caring Society et al v Attorney General of Canada*, 2016 CHRT 2 (decision released on 26 January 2016), online: <<http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/127700/index.do>>.

<sup>37</sup> First Nations Family and Child Caring Society, "Federal Budget 2016 Information Sheet" (22 March 2016), online: <<https://fncaringsociety.com/sites/default/files/Budget%202016%20info%20sheet.pdf>>.

<sup>38</sup> *First Nations Family and Child Caring Society et al v Attorney General of Canada*, 2016 CHRT 16 (decision released on 14 September 2016), online: <<https://fncaringsociety.com/sites/default/files/2016%20CHRT%2016%20-%20September%2015.pdf>>.

<sup>39</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (13 February 2013), online: <<https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>>.

<sup>40</sup> *Ibid*.



Women in Val D'Or Quebec have come forward to publicly complain about physical and sexual abuse by police.<sup>41</sup> Recently, a number of RCMP Officers have been arrested or disciplined for sexual exploitation and sexual abuse of women and girls who were in their charge.<sup>42</sup> The extent of police brutality towards Indigenous women and girls is shocking and it continues unabated.<sup>43</sup> The CAEFS/Chair in Indigenous Governance/FAFIA report on Indigenous Women and Women in Detention provides more information about police brutality against Indigenous women and girls.

It is difficult to rebuild trust as long as police racism and sexual exploitation of Indigenous women and girls continues.

## 2) Inadequate police complaints processes

Currently, there is no oversight body or complaints procedure for policing in any jurisdiction that has the confidence of Indigenous women and girls, and that is genuinely accessible to them. For example, although the Civilian Review and Complaints Commission for the RCMP states that it is an independent agency, all complaints against RCMP Officers are first investigated by the RCMP; further steps are only taken if the Commission is not satisfied with the RCMP report.<sup>44</sup> Complaints against the police are notoriously unsuccessful.<sup>45</sup>

Further, there is no nationally coordinated information mechanism to ensure that Indigenous women have the knowledge and supports necessary to make complaints against police officers or agencies.

Trust between Indigenous women and police authorities requires credible complaint procedures and a transparent and supported process for lodging complaints, particularly for those living in remote areas. These do not yet exist.

## 3) Historically discriminatory law still in place

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<sup>41</sup> "Aboriginal women's claims of police sexual abuse under investigation", *CBC* (22 October 2015), online: <<http://www.cbc.ca/news/canada/montreal/aboriginal-women-s-claims-of-police-sex-abuse-under-investigation-1.3282845>>.

<sup>42</sup> "Mountie takes woman home to 'pursue a personal relationship'", *CBC* (8 January 2015), online: <<http://www.cbc.ca/news/canada/manitoba/mountie-takes-woman-home-from-jail-to-pursue-a-personal-relationship-1.2893487>>; "Former Manitoba Mountie charged with sexual exploitation", *CBC* (7 September 2016), online: <<http://www.cbc.ca/news/canada/manitoba/former-rcmp-officer-charged-winnipeg-1.3751243>>; Maryse Zeidler, "Surrey RCMP arrest Mountie after Creep Catchers sting", *CBC* (9 September 2016), online: <<http://www.cbc.ca/news/canada/british-columbia/surrey-rcmp-creep-catchers-1.3755848>>.

<sup>43</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), 26:2 *CJWL* 253.

<sup>44</sup> See Civilian Review of Complaints Commission for the RCMP (2016), online: <<https://www.crcc-ccetp.gc.ca>>.

<sup>45</sup> 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>>.



The CEDAW Committee called upon the Government of Canada to amend the *Indian Act* to eliminate discrimination against women with respect to the transmission of Indian status. A central reason for eliminating this long-standing sex discrimination is that it remains a potent marker of the disrespect that Indigenous women have been subjected to, and of the unwillingness of the government to treat them as equals at law. Establishing respect and dignity for Indigenous women by removing this blatant, legislated sex discrimination from the *Indian Act* has been called for by international treaty bodies for many years, but it has not yet been done.<sup>46</sup>

## V. Conclusion

Although the National Inquiry into missing and murdered Indigenous women is a welcome step, Canada has no plan in place for implementing the outstanding 37 CEDAW recommendations. Many of these recommendations can be acted on immediately, and this work should be occurring alongside, and in collaboration with, the Inquiry.<sup>47</sup>

The Committee has asked a critical question: how are monitoring and oversight of implementation to be ensured? Assessing the implementation of CEDAW and IACHR recommendations is of key importance, but currently it is difficult, if not impossible.<sup>48</sup>

Canada tends to use general language and point to budget allocations when reporting on its progress. But references to budget allocations are often not informative. Sometimes governments refer to budget allocations that are for one-time, short-term community grants; sometimes they refer to allocations that are for large envelopes of programs and services and it is not specified, or unknown, whether or how the money will affect the disadvantaged status and conditions of Indigenous women and girls that are the root cause of the violence.

It is of serious concern to FAFIA and NWAC that the Government of Canada states that actions are being taken that give effect to the CEDAW recommendations, when there is no transparent or effective monitoring process for overseeing implementation.

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<sup>46</sup> See CAEFS/Chair in Indigenous Governance/FAFIA report on Indigenous Women and Women in Detention submitted to the UN CEDAW Committee on the occasion of Canada's eighth and ninth periodic review.

<sup>47</sup> IACHR Follow-Up Hearing, *supra* note 11 (see oral submission by Dawn Lavell-Harvard, President, Native Women's Association).

<sup>48</sup> See IACHR Report, *supra* note 2 (e.g., the IACHR concluded that the full implementation of the recommendations of the Oppal Inquiry in British Columbia (The Honourable Wally T. Oppal, QC, *Forsaken*, December 2012, online: <<http://www.missingwomeninquiry.ca/obtain-report>>) was necessary to fulfill Canada's obligations to act with due diligence and prevent violence against Indigenous women and girls. But the Auditor General of British Columbia is currently auditing the implementation of the Oppal Inquiry recommendations, precisely because information regarding implementation is unclear and legislators and the public do not know what has been done and what has not: see Auditor General of British Columbia, follow-up on the Missing Women's Commission of Inquiry, 2016, online at: <<http://www.bcauditor.com/work-in-progress>>).

Further, there is no coordination mechanism, and no mechanism for centralizing information, to oversee the various initiatives being implemented by different public agencies across levels of government.<sup>49</sup> The national roundtables do not serve this purpose. Consequently, there is no means of ensuring that governments are indeed acting on the CEDAW and IACHR recommendations and no mechanism to hold governments to account.

The National Inquiry is a starting point in Canada's efforts to acknowledge and correct discrimination and violence against Indigenous women and girls. The outcome of the National Inquiry must be a National Action Plan that reflects and incorporates all of the CEDAW recommendations.

### **Recommendations**

**The Government of Canada, governments of the provinces and territories, and the National Inquiry on Missing and Murdered Indigenous Women and Girls should:**

- **Implement the recommendations of the TRC, IACHR, CEDAW and other UN bodies in relation to murdered and disappeared Indigenous women and girls that go beyond the initiation of a national inquiry, including recommendations that would most immediately affect Indigenous women and girls' daily lives, health, safety and security, address their poor socio-economic conditions, eliminate sex discrimination in the *Indian Act* and ensure specific supports for victims of domestic violence.**
- **Publish the provincial and territorial Orders-In-Council necessary to make the Inquiry a national inquiry in an accessible, central location;**
- **Ensure that through the national inquiry, or otherwise, special scrutiny is given to the vulnerability of Indigenous children in care, runaways, and homeless Indigenous women and children to racism and sexualized violence by police and other actors.**
- **Ensure that Indigenous women and their families are provided with an independent review of cases where there are questions about the adequacy or impartiality of police investigations;**
- **Ensure that through the national inquiry, or otherwise, an extensive investigation into police violence against Indigenous women and girls is undertaken, noting all filed complaints, investigations, charges, and prosecutions.**
- **Undertake a complete review of all police acts, laws, regulations, and policies related to prevention, investigation, and discipline for acts of racism and violence against women generally, and Indigenous women and girls specifically, as well as all police oversight mechanisms and entities.**
- **Undertake a review of Canada's domestic and international human rights obligations in regard to the protection of Indigenous women and girls from racist**

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<sup>49</sup> CEDAW Inquiry Report, *supra* note 1 at para 188.

- and sexualized violence committed by state actors, such as law enforcement, lawyers, health care professionals, child welfare workers, and judges.
- Design methods for compensating victims of police failures, neglect, and violence, and their families and communities.
  - Design and establish an accessible, transparent mechanism for overseeing the implementation of the CEDAW recommendations, and other related recommendations on missing and murdered Indigenous women and girls.
  - Based on Canada's domestic and international human rights obligations, and specifically Article 18 of UNDRIP, invest in Indigenous women's organizations at the national, provincial and territorial level to participate in their own decision-making structures and prepare informed positions in the engagements on the issues that directly impact the level of violence that Indigenous women experience. Support women's human rights organizations that can assist and offer expertise to the National Inquiry.

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