

**Legal Strategy Coalition on Violence Against Indigenous
Women**

**Ongoing Systemic Inequalities and Violence Against
Indigenous Women in Canada**

Presented to

**Ms. Dubravka Šimonović
United Nations Special Rapporteur on Violence against
Women, its Causes and Consequences**

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Legal Strategy Coalition (LSC)* on Violence Against Indigenous Women



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The Committee recalls that the State party has a well-established legislative and institutional framework, a functioning judiciary, preventive and protective measures against violence and remedies for women victims of violence. In order to meet the due diligence standard, however, the formal framework established by the State party must also be effective in practice, as it is not the formal existence of judicial remedies that demonstrates due diligence, but rather their actual availability and effectiveness.¹

Introduction

The Legal Strategy Coalition on Violence Against Indigenous Women (“LSC”) welcomes the opportunity to apprise the Special Rapporteur on Violence Against Women of the persistence of disproportionate violence against Indigenous women and girls in Canada. The LSC remains alarmed and outraged by the continuation of systemic inequalities Indigenous women face in Canada’s systems of justice as well as the severely inadequate steps taken by government authorities to address this human rights crisis. The interacting forces of sexism, racism, and colonialism are killing and harming Indigenous women and girls across this country at a horrific rate. State institutions are not only failing to prevent this violence, they are too often contributing to and facilitating it. Widespread societal prejudices and biases have woven themselves into the fabric of our state institutions. Violence against Indigenous women and girls cannot be properly addressed without a sustained and concerted effort to reconfigure the basic assumptions upon which our institutions, and the individuals that constitute them, operate.

This discussion paper highlights systemic failures that result in ongoing dehumanization of Indigenous women, girls, trans, and two-spirit persons, preventing the actualization of basic rights and guaranteed freedoms. In particular, the paper notes Canada’s failure to implement recommendations issued by the Inter-American Human Rights Commission (IACHR) in December 2014² and by the Committee on the Elimination of Discrimination Against Women (“the CEDAW Committee”) in March 2015,³ meant to address the alarming rate of missing and murdered Indigenous women and girls. The CEDAW Committee further found that Canada’s failure to adequately respond to, and prevent, such violence constituted a grave violation of

¹ 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*, CEDAW/C/OP.8/CAN/1 (March 30, 2015), at para 207. Available online:

<http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf> [CEDAW, 2015].

² The Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14 (Organization of American States: 21 December 2014). Available online: <<https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>> [IACHR, 2014].

³ CEDAW, 2015, *supra* note 1.

Indigenous women's and girls' human rights. The discussion paper includes an assessment of the National Inquiry into Murdered and Missing Indigenous Women and Girls, launched in September 2016 following more than a decade of advocacy by civil society actors.

The Legal Strategy Coalition on Violence Against Indigenous Women

The Legal Strategy Coalition on Violence Against Indigenous Women (LSC) is a nation-wide *ad hoc* coalition of groups and individuals formed in 2014, following the murder of Inuit university student Loretta Saunders, to marshal resources that address violence against Indigenous women⁴ in order to address the ongoing and highly disproportionate prevalence of violence and discrimination against Indigenous women and girls in Canada. The coalition is comprised of individuals and civil society organizations with interdisciplinary expertise on issues that impact Indigenous women, including human rights, gender equality, and constitutional law. Its member groups originate in, or work with, the Indigenous peoples of Canada. The LSC is engaged in legal advocacy and research to urgently address the critical issue of missing and murdered Indigenous women (MMIW).

In February 2015, the LSC released a report to assess over two decades worth of reports with recommendations for stopping violence against Indigenous women and girls.⁵ This research was intended to address the Canadian Department of Justice contention that a national inquiry on MMIW was not necessary due to there being a list of existing reports on the subject.

The LSC reviewed 58 reports containing over 700 recommendations. The reports dealt with aspects of violence and discrimination against Indigenous women and girls, including government studies, reports by international human rights bodies, and published research of Indigenous women's organizations. The LSC researchers found that only a few of the more than 700 recommendations in these reports have ever been fully implemented. Moreover, the LSC research showed that while there is a general consensus about the root causes of violence against Indigenous women, there has been a complete failure to plan or implement the necessary responses to address the crisis. The research suggested that a national inquiry should examine the resistance to implementation of known and recommended measures to address the issue, including the systemic barriers that must be addressed in order to bring about necessary changes. A national inquiry has since been established, as discussed below.

⁴ LSC reports, resources, and a list of members are available here: <<http://www.leaf.ca/legal/legal-strategy-coalition-on-violence-against-indigenous-women-lsc/>>.

⁵ Pippa Feinstein and Megan Pearce, *Violence against Indigenous women and girls in Canada Review of reports and recommendations - Executive Summary* (February 26, 2015). Available online: <<http://www.leaf.ca/wp-content/uploads/2015/02/Executive-Summary.pdf>> [Feinstein and Pearce].

Persistent Racism and Sexism in the Canadian Justice System

The situation of Indigenous women and girls must be placed in the context of ongoing settler colonial relations and a long history of targeted colonial violence against Indigenous peoples in Canada. The Supreme Court of Canada has in several cases observed that systemic discrimination against Indigenous people exists in the Canadian legal system, but so far neither the Court nor governments have provided any systemic remedies to effectively address such inequalities.⁶ Indigenous people are discriminated against in Canada's criminal justice system regardless of whether their contact with this system is as an individual facing criminal accusation or victimization.

In 1991, the Aboriginal Justice Inquiry in Manitoba released its report, emphasizing various ways in which racism had contributed to deaths of Indigenous people in Manitoba, and to notably inadequate responses to such deaths.⁷ While the Inquiry focused specifically on the 1971 death of Helen Betty Osborne, a young Cree woman and the 1988 police killing of J.J. Harper, a 37-year-old Oji-Cree man, it reported more broadly on differential treatment of Indigenous as compared to non-Indigenous persons in all aspects of the justice system (i.e. policing, courts, and correctional services). A few years later in the neighbouring province of Saskatchewan, the 2004 *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* found that the Saskatoon Police Service had carried out a “superficial and totally inadequate investigation” into the suspicious 1999 death of a Cree teenager who had been in police custody the night before he was found dead of cold exposure.⁸ It linked his death to the police practice of taking Indigenous men to the city's outskirts and leaving them there, without coats or footwear, in the depths of winter. Indigenous women in Saskatoon continue to face violent police practices that maintain a context of severe mistrust between Indigenous communities and criminal justice actors.⁹

Commissions of Inquiry and the Supreme Court of Canada have long recognized that systemic discrimination in the criminal law system deprives Indigenous people of equal protection of, and treatment under, the law. Close to 30 years ago, the inquiry into the prosecution and wrongful imprisonment of Donald Marshall Jr. in Nova Scotia found he was discriminated against at all

⁶ *R v Gladue*, [1999] 1 SCR 688, 1999 CanLII 679 (SCC) [*Gladue*]; *R v Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433; *R v Williams*, [1998] 1 SCR 1128, 1998 CanLII 782 (SCC).

⁷ Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba* (Manitoba: November 1999). Available online: <<http://www.ajic.mb.ca/volume.html>>.

⁸ The Honourable Mr. Justice David H. Wright, *Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild* (Saskatchewan: 2004). Available online: <http://www.publications.gov.sk.ca/freelaw/Publications_Centre/Justice/Stonechild/Stonechild.pdf>.

⁹ 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) [Human Rights Watch, 2017]. Available on-line: <https://www.hrw.org/sites/default/files/supporting_resources/canada_saskatchewan_submission_june_2017.pdf>.

stages in the legal process because he was Mi'kmaq.¹⁰ In 2013, almost 25 years after the release of the Marshall Inquiry report, former Supreme Court of Canada Justice, the Honourable Frank Iacobucci, conducted an independent review of the jury system in Ontario, and commented on the criminal justice system more broadly. He reported, “I unfortunately expect that a disturbing number of First Nations people in Ontario can relate to the circumstances endured by Donald Marshall, Jr.”¹¹ Justice Iacobucci further stated “it is clear that the jury system in Ontario, like the province’s justice system more generally, and its counterparts across a variety of Canadian and international jurisdictions, has often ignored or discriminated against Aboriginal persons.”¹² He described the justice system as it relates to First Nations people, as being in “crisis”,¹³ a word used by the Supreme Court of Canada in 1999 to describe the Canadian criminal justice system and particularly the disproportionate over-representation of Indigenous people in prisons and the criminal justice system more broadly.¹⁴

In 2018, similar themes and findings echo in the report of the Ontario Office of the Independent Police Review Director (“OIPRD”) regarding the Thunder Bay Police Service’s investigation into the 2015 death of Ojibway man Stacy Debungee. The OIPRD found “substantial” shortcomings in the police’s handling of Mr. Debungee’s death, concluding that “the investigating officers failed to treat or protect the deceased and his family equally and without discrimination based on the deceased’s Indigenous status”¹⁵, and found that allegations of “neglect of duty” were substantiated against members of the police.¹⁶ The police’s investigation into Mr. Debungee’s death occurred at the same time that a coroner’s inquest into the deaths of seven First Nations youths in Thunder Bay was being conducted. Mr. Debungee, as with several of the youth in question, had been found dead in a river in Thunder Bay. The LSC is still jolted by recent events, including the unsatisfactory explanation for these seven student deaths in Thunder Bay, as well as by the acquittals of the men accused of murdering Indigenous youth Colten Boushie and Tina Fontaine.

¹⁰ Royal Commission on the Donald Marshall, Jr., Prosecution, *Digest of Findings and Recommendations* (Nova Scotia: December 1989). Available online: <https://novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf>.

¹¹ *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by the Honourable Frank Iacobucci* (Ontario: February 2013). Available online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html>.

¹² *Ibid.*, at para 204.

¹³ *Ibid.*, at para 14.

¹⁴ *Gladue*, *supra* note 6.

¹⁵ Ontario, Office of the Independent Police Review Director, *Investigative Report – File #: E-201603181148379843 / E-201603181117037812* (Ontario: February 15, 2018) at p. 124. Available online: <https://www.scribd.com/document/373021187/DeBungee-OIPRD-Investigative-Report-February-15-2018#download&from_embed>.

¹⁶ *Ibid.*, at p. 119.

The Criminal Justice System and Indigenous Women and Girls

For Indigenous women and girls, gender biases and stereotypes intersect with, and compound, systemic racism and colonialism when placed in contact with the criminal justice system. Sexist assumptions about consent and a woman's credibility in sexual assault cases became the topic of some public attention in Canada starting in the 1970s, and led eventually to the 1992 *Criminal Code* amendments intended to address the "twin myths" in sexual assault: (1) that a sexual assault complainant's prior consent to a sexual activity means she is more likely to have consented to the sexual activity at issue; and (2) that a woman's sexual history can render her less worthy of belief. In a context of ongoing colonial gender violence, the persistence and pervasiveness of these myths continue not only to inform the attitudes and actions of many perpetrators of sexual violence, but also infuse the treatment of Indigenous women by all aspects of the criminal justice system. For example, in a 2014 sexual assault trial in Alberta, trial judge Robin Camp took a blame-the-victim approach, asking questions such as "why didn't you just sink your bottom down into the basin so he couldn't penetrate you?" and "why couldn't you just keep your knees together?" The judge acquitted the accused and, a year after the trial, Justice Camp was appointed by the federal government to the Federal Court of Canada.¹⁷

The intersecting forces of sexism, racism, and colonialism contribute not only to the over-representation of Indigenous women in prison and criminal victimization, they also result in inadequate investigation into violence against Indigenous women and to further discrimination at trial. The 1995 murder of Salteaux First Nation member Pamela George by two white university students, and the ensuing trial in 1996, caused outrage amongst Indigenous and women's groups and leaders for the inadequate response to what was undeniably a race- and sex-based crime. A friend of the accused testified at trial that both accused had bragged of killing Ms. George, and one of them had stated, "[S]he deserved it. She was an Indian."¹⁸ Furthermore, despite the 1992 *Criminal Code* amendments intended to combat the "twin myths" in sexual assault cases, trial judge Ted Malone instructed the jury to keep in mind that Ms. George "was indeed a prostitute." Such efforts encourage discrimination based on sexual history and violate the principle of equal benefit before the law." A Yorkton Tribal Council representative reportedly wrote to the Minister of Justice following the acquittals of first-degree murder, stating, "Too many of our First Nations

¹⁷ He has since resigned, following a recommendation by the Canadian Judicial Council (CJC) that he be removed from the bench. A CJC inquiry, held following complaints about Camp's conduct, led to a finding that his conduct in the trial in question "was so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role that public confidence is sufficiently undermined to render the judge incapable of executing the judicial office": Canadian Judicial Council, *In the Matter of s. 63 of the Judges Act, R.S., C. J-1, Canadian Judicial Council Inquiry into the Conduct of the Honourable Robin Camp – Report to the Minister of Justice* (Ottawa: 8 March 2017) at paras 13, 53. Available online: <https://www.cjc-ccm.gc.ca/cmslib/general/Camp_Docs/2017-03-08%20Report%20to%20Minister.pdf>.

¹⁸ Quote reproduced in Diane Rowe, "Update on the Pamela Jean George Case", *Jurifemme Publications* (20)1, Winter 2001. Available online: <<http://nawl.ca/en/jurifemme/entry/update-on-the-pamela-jean-george-case>>.

women have met similar violent-related deaths. Now, more so, as a result of this case, we fear that this might bring about an open season on our women.”¹⁹

Almost two decades later, a finding by the Committee on the Elimination of Discrimination Against Women (CEDAW) indicates that such a fear was well-founded: “The Committee notes with serious concern that perpetrators [of violence against Indigenous women] may count on the insufficient response of the police and justice system and continue to operate in an environment conducive to impunity in which aboriginal women continue to suffer high levels of violence with insufficient criminal liability and without adequate access to justice.”²⁰

The Current Context

Three recent cases illustrate the ongoing dehumanization of Indigenous women and girls by the criminal justice system when already faced with disproportionate violent victimization in Canada.

Tina Fontaine

The life and death of Tina Fontaine are emblematic of the ongoing crisis of systemic violence facing Indigenous women and girls in Canada. Tina Fontaine was a 15-year-old Indigenous girl who was found dead in Winnipeg’s Red River in 2014, her body wrapped in a duvet and weighted with rocks. On February 22, 2018, a Winnipeg jury acquitted Raymond Cormier of her murder.

The story of Tina Fontaine shows, yet again, the targeted discrimination and violence girls and young women face in a society imbued with anti-Indigenous racism. It also clearly demonstrates the failures of multiple state systems. Canada’s legal system failed Tina at every turn.

Manitoba’s Child and Family Services failed her when they placed her in a hotel room, unsupervised, days before her death. By placing her in an unsafe location, without adequate care, the child welfare apparatus increased her already disproportionately high risk – as an Indigenous girl – of being targeted by violent victimization. The Winnipeg Police Services failed her on the last day she was seen alive when they interacted with her during a vehicle stop. They let her go even though she had been flagged as missing, thereby failing to act in accordance with their own alerts. And again, the criminal justice system failed her when no one was held to account for her death. The prosecuting authorities failed to convict in spite of a reasonable chance of the charges being proven on the evidence available.

¹⁹ Quote reproduced in Albert Angus, “Saskatchewan Justice On Trial: The Pamela George Case” *Saskatchewan Indian* 27(1), April 1997, at p. 24. Available online: <<http://www.sicc.sk.ca/archive/saskindian/a97apr05.htm>>.

²⁰ CEDAW, 2015, *supra* note 1 at para 209.

The treatment of Tina Fontaine reiterated the harrowing message Canada continues to send to Indigenous girls and their families: Indigenous girls' lives do not matter.

Angela Cardinal

The independent investigator appointed by the Alberta Minister of Justice recently concluded an investigation into the treatment of “Angela Cardinal,” a pseudonym for an Indigenous woman victimized by sexual assault. During a 2015 preliminary inquiry into aggravated sexual assault by Lance Blanchard, Ms. Cardinal, the victimized individual, was remanded into custody on a motion by the Crown prosecutor. There was no legal argument or any case law presented to justify this motion. And the motion was brought even though Ms. Cardinal was not properly subpoenaed and she never refused to answer a question. As IAAW and LEAF observe in their submission to the Inquiry into the Treatment of Angela Cardinal, “The remanding of the complainant was not done according to law and violated basic norms of due process.”²¹ She was held in custody over five days. She was shackled while providing her testimony, held in a cell close to her violent assailant, and transported between the courthouse and the remand centre in the same vehicle as he was. The investigation report submitted to the Alberta government found no judicial bias but stated there was systemic bias that played a role in Angela’s treatment as a witness.²²

Although it remains important to recognize systemic biases, in the present state of Canadian law, placing the responsibility for this atrocity on systemic bias is tantamount to absolving the state from having to remedy it. In particular, governments adopt the position that the equality provisions of the *Canadian Charter of Rights and Freedoms* do not place a positive obligation on them to act.²³ This approach perpetuates the stereotypes underlying the re-victimizing and re-traumatizing of Indigenous women. It is the same explanation for police neglect and incompetence that was provided after the long process of the Oppal Inquiry²⁴ into the abduction of women, many of them Indigenous, from the Downtown Eastside of Vancouver, as discussed in more detail below.

Cindy Gladue

Cindy Gladue, an Indigenous woman and mother of three, bled to death in a hotel bathtub in 2011. Bradley Barton was acquitted of murder and manslaughter in Ms. Gladue’s death, despite admitting that he had caused an 11-centimetre wound in her vaginal wall which resulted in her

²¹ *Independent Review of Circumstances Surrounding the Treatment of “Angela Cardinal” in R. v. Blanchard*. (Alberta: 15 October 2017). Available online:

²² *Independent Report on the Incarceration of Angela Cardinal* (Alberta: 23 February 2018). Available online: <<https://justice.alberta.ca/publications/Documents/IndependentReportIncarceration-AngelaCardinal.pdf>>.

²³ *The 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, at s 15.

²⁴ The Honourable Wally T. Oppal, QC, Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry* (British Columbia: 2012). Available online: <<http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>> [Oppal Report].

death. His defence was that Ms. Gladue had consented to “rough sex”. Defense counsel, Crown counsel, and the trial judge all contributed to actions that dehumanized and violated the dignity of Ms. Gladue at trial. These actions permitted sexism and racism to shape the court proceedings and allowed negative biases and stereotypes to be presented to the entirely non-Indigenous jury’s assessment of the evidence and understanding of the law.

Bradley Barton’s trial was riddled with invocations of prejudicial stereotypes about Indigenous women. In 2017, the Alberta Court of Appeal issued a lengthy and in-depth decision in which it overturned the jury’s acquittals and ordered a new trial. Amongst several fatal errors of law identified, the appellate Court found that the trial judge failed throughout the trial, and in his final charge to the jury, to “counter the stigma and potential bias and prejudice that arose from the repeated references to Gladue as a ‘prostitute’, ‘Native girl’ and ‘Native woman’”.²⁵ By ignoring all due process in the admission of her sexual history, the court allowed stereotypical myths and racist and sexist assumptions to enter the proceedings. As the Court of Appeal explained, “Those references implicitly invited the jury to bring to the fact-finding process discriminatory beliefs or biases about the sexual availability of Indigenous women and especially those who engage in sexual activity for payment”.²⁶

Barton has recently been given leave to appeal to the Supreme Court of Canada.²⁷ One of his grounds of appeal is that the Court of Appeal wrongfully accepted the submissions of the interveners at the Court of Appeal, the Institute for the Advancement of Aboriginal Women (IAAW) and the Women’s Legal Education and Action Fund (LEAF), two members of the LSC.²⁸ LEAF and the IAAW intervened on well-established principles concerning the treatment of Indigenous women in the criminal justice system, arguing that the instructions to the jury violated the laws of consent and failed to apply the available legal protections intended to protect sexual assault victims from gender biases and myths in the trial process. The LSC expresses concern that such principles are not adequately upheld within Canada’s justice system.

Other discriminatory and disrespectful aspects of the trial were not addressed at all on appeal. In particular, Crown counsel was permitted to introduce Ms. Gladue’s preserved pelvic tissue as evidence. We know of no other trial in which a person’s body part has been submitted as evidence. Observers and commentators have suggested that no dead white woman would have been treated in such an objectifying, degrading, and dehumanizing manner – that Ms. Gladue’s sexual organs were deemed an appropriate “specimen” for the Court precisely because she was

²⁵ *R v Barton*, 2017 ABCA 216 (CanLII) at para 128.

²⁶ *Ibid.*

²⁷ *Barton v Her Majesty the Queen*, file 37769. Available on-line: <<https://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/17003/1/document.do>>.

²⁸ Bradley Barton, *Memorandum of Argument on Application for Leave to Appeal, File 37769*. Available online: <https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37769/MM010_Applicant_Bradley-David-Barton.pdf>. LEAF and IAAW’s submissions to the Alberta Court of Appeal are available online: <<http://www.leaf.ca/wp-content/uploads/2016/05/2016-05-02-final-LEAF-IAAW-factum-R-v-Barton-ABCA.pdf>>.

an Indigenous woman. Many such concerns are documented in *Our Breaking Point*, a public resource booklet created alongside the family of Cindy Gladue. The resource details the dehumanization of Cindy Gladue by an accused violent offender and by the criminal justice system responding to her violent victimization and death. As Muriel Stanley Venne underscores, “[the] courts have never been kind or considerate of Indigenous women. The trust that should be a cornerstone of this relationship has been mostly absent and often violent.”²⁹

Cindy Gladue’s experience is but one example of the way in which intersectional discrimination and resulting gender stereotyping plays out in the lives of Indigenous women, and, as noted by the CEDAW Committee in 2015, has become “institutionalized within the administration of” the State.³⁰

These three examples are not isolated, rather they clearly illustrate the ongoing nature of the concerns that the IACHR and CEDAW recommendations were intended to address.

Additionally, in recent years, dozens of Indigenous women have come forward to report having been forcibly sterilized within Canada’s public health care system, showing other state institutions’ culpability in violence against Indigenous women.³¹ The root causes are the same: discrimination and harassment based on stereotypes of Indigenous women.

Implementation of systemic responses remain outstanding and desperately needed to prevent further dehumanization within Canada’s systems of justice.

Concerns of United Nations Treaty Bodies and Others

The quotation that begins this paper is from an inquiry report issued by the CEDAW Committee in March, 2015. In 2013, the Feminist Alliance for International Action (“FAFIA”) and the Native Women’s Association of Canada (“NWAC”) provided a submission to assist the

²⁹ Institute of Advancement for Aboriginal Women, *Our Breaking Point: Canada’s Violation of Rights in Life and Death* (2015) at 22. Available online: <<http://www.iaaw.ca/wp-content/uploads/2016/10/ourbreakingpoint-cindygladue.pdf>>.

³⁰ CEDAW 2015, *supra* note 1 at para 205.

³¹ See, e.g., CBC News, “Another Saskatoon Woman Says She Was Sterilized Against Her Will” (16 December 2015). Available online: <<http://www.cbc.ca/news/canada/saskatoon/saskatoon-woman-says-she-was-sterilized-against-her-will-1.3366464>>; CBC News, “I Didn’t Want It Done: Saskatoon Woman Was Sterilized Against Her Will” (18 November 2015). Available online: <<http://www.cbc.ca/news/canada/saskatoon/saskatoon-woman-sterilized-against-will-1.3324980>>; Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women* (22 July 2017) [Bartlett & Boyer, 2017] Available online: <https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf>; *MRLP and SAT v AG Canada et al*, Saskatchewan Q.B. No. 1485 of 2017.

Committee with its inquiry.³² The submission canvassed periodic reviews issued by various United Nations treaty bodies between 2005 and 2012 that have raised concern with violations of the human rights of Indigenous women and girls in Canada, particularly regarding their murders and disappearances.³³ FAFIA and NWAC also referred to statements by the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo, regarding violence against Indigenous women in Canada.³⁴

Many more reports and reviews have been issued since the 2013 submission of NWAC and FAFIA. The Inter-American Commission of Human Rights issued a set of recommendations in December 2014 following its investigation into murdered and missing women in British Columbia.³⁵ The IACHR's conclusions and recommendations are reproduced in the appendix for ease of reference. It has since held three follow-up hearings, in April 2016, December 2016, and December 2017.³⁶ At the IACHR follow up hearing in April 2016, FAFIA reported that the rate of violence against Indigenous women has increased in recent years, while the rate of violence against women generally has been decreasing.³⁷

As noted above, in February 2015, the LSC published its findings of a review of government, UN treaty body, NGO, and other reports on violence against Indigenous women to analyze and

³² Submission made by FAFIA and NWAC to the CEDAW Committee Article 8 Inquiry on the Obligations of Canada with respect to the Murders and Disappearances of Aboriginal Women and Girls 2013.

³³ *Ibid*, citing to the following documents: Human Rights Committee, *Concluding observations: Canada*, UN Doc. CCPR/C/CAN/CO/5, 20 April 2006, at para 23-24, available online:

<<http://www.refworld.org/docid/453777a50.html>>; Committee on Economic, Social, and Cultural Rights, *Concluding observations: Canada*, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, 22 May 2006, at para 11(d), 15, 26, available online: <<http://www.refworld.org/docid/453777a30.html>>; Committee on the Elimination of Racial Discrimination, *Concluding observations: Canada*, UN Doc. CERD/C/CAN/CO/18, 25 May 2007, at para 20 -21, available online: <<http://www.refworld.org/publisher,CERD,CONC/OBSERVATIONS,CAN,465fe0082,0.html>>; Committee on the Elimination of Discrimination against Women, *Concluding observations: Canada*, UN Doc. CEDAW/C/CAN/CO/7, 7 November 2008, at para 30-32 and para 43-46, available online:

<<http://www.refworld.org/docid/494ba8ce0.html>>; Committee on the Elimination of Racial Discrimination, *Concluding observations: Canada*, UN Doc. CERD/C/CAN/19-20, 9 March 2012, at para 17, available online: <<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.19-20.pdf>>; Committee against Torture, *Concluding observations: Canada*, UN Doc. CAT/C/CAN/CO/6, 25 June 2012, at para 20, available online: <<http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CAN.CO.6.doc>>; Committee on the Rights of the Child, *Concluding observations: Canada*, UN Doc. CRC/C/CAN/CO/3-4, 5 October 2012, at para 48, available online: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-CAN-CO-3-4_en.pdf>.

³⁴ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, to the United Nations Human Rights Council, 23 May 2012, A/HRC/20/16, at para 61 – 65. Available online: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.16_En.PDF>.

³⁵ IACHR, 2014, *supra* note 2.

³⁶ Missing and Murdered Indigenous Women in British Columbia, Canada, Follow-Up Hearing, Inter-American Commission on Human Rights, Washington, DC, 7 April 2016. Available online:

<<https://www.youtube.com/watch?v=mOPyAG3kXd4>>; Follow-Up Hearing, Inter-American Commission on Human Rights, December 9, 2016 [December 2016 IACHR Follow-Up Hearing]. Available online: <<https://www.youtube.com/watch?v=TkjSa7JYA30>>; Follow-Up Hearing, Inter-American Commission on Human Rights, Washington DC, December 7, 2017. Available online: <<https://www.youtube.com/watch?v=-pUGBTj1Bk&index=4&list=PL5QlapyOGhXt0BSFvgydHBU6yz2atqEN2&t=0s>>.

³⁷ December 2016 IACHR Follow-Up Hearing, *ibid*, starting around 47:50.

summarize their findings and recommendations.³⁸ The LSC determined that over 50 reports had produced approximately 700 recommendations to address the disproportionate rates of violence against Indigenous women but yet almost none of the recommendations had been implemented.

In March 2015, the CEDAW Committee issued a report on the findings of its inquiry under Article 8 of the Optional Protocol, having been requested by FAFIA and NWAC to investigate violence against Indigenous women in Canada. The Committee found that Canada's failure to protect Indigenous women from disappearance and murder constitutes a grave human rights violation.³⁹ It referred to Canada's "protracted failure...to take effective measures" to protect Indigenous women.⁴⁰ It formulated 38 recommendations for Canada to implement to address this crisis.

In the fall of 2015, less than a year after the IACHR and CEDAW recommendations were issued, a new government was elected in Canada on a platform that included prioritizing gender equality and establishing a nation-to-nation relationship with Indigenous peoples. A key platform promise was to launch a national inquiry into murdered and missing Indigenous women and girls – something which Indigenous women's rights activists in Canada had been demanding for a long time, something which was recommended by the IACHR and CEDAW, and something which the previous government had refused to do.

Three years after the IACHR and CEDAW Committee recommendations, however, and despite the promising change in government, Canada has failed to take meaningful action on almost all of the recommendations. The failure noted by CEDAW in 2015 is even more protracted today. Indigenous women continue to be attacked, murdered, and "disappeared." The growing tide of violence against Indigenous women has been well documented. In October 2017, IAAW and LEAF (also interveners in the *Barton* case) reported to the Independent Review of the treatment of Angela Cardinal:

In a context of inequality, discrimination, and racism, Statistics Canada reports that Indigenous women experience violent victimization at a rate 2.7 times that of non-Indigenous women. Specifically, Indigenous women are targeted for varying forms of violent attacks, including sexual assault (three times that of non-Indigenous women), physical violence (almost double that of non-Indigenous women), and domestic violence (three times that of non-Indigenous women). Indigenous women are also extremely overrepresented among murder victims. While Indigenous people are only 4.3% of the

³⁸ Feinstein and Pearce, *supra* note 5.

³⁹ CEDAW, 2015, *supra* note 1 at paras 214-215.

⁴⁰ *Ibid* at para 214.

Canadian population, Indigenous women represented 24% of Canadian murder victims in 2015.⁴¹

The systemic forcible sterilization of Indigenous women has also been acknowledged and ignored. Following media attention in 2015, the Saskatoon Regional Health Authority commissioned an external review of sterilization procedures in its hospitals.⁴² The report resulting from the external review confirmed the ongoing practice of forced sterilization and that “pervasive structural discrimination and racism...remains unmistakable” within the regional health care system.⁴³ The Authority apologized publicly,⁴⁴ but no entity has either undertaken the reforms necessary to understand how many women have been affected or to ensure that more women do not suffer the same violation.

Since the federal election of 2016, international attention has continued to be focussed on the violation of Indigenous women's human rights in Canada. In October 2016, FAFIA and NWAC provided a joint submission to CEDAW for its eighth and ninth periodic review of Canada. The organizations provided an update on relevant observations and comments by international and regional human rights bodies since the CEDAW Committee's 2015 inquiry report. Specifically, the submission references concluding observations by the Human Rights Committee⁴⁵ and by the Committee on Economic, Social and Cultural Rights.⁴⁶ Since October 2016, both the CEDAW Committee and the Committee on the Elimination of Racial Discrimination have published

⁴¹ Institute for the Advancement of Aboriginal Women (IAAW) and the Women's Legal Education and Action Fund (LEAF), *Submission to the Independent Review of Circumstances Surrounding the Treatment of “Angela Cardinal” in R. v. Blanchard* (October 15, 2017) at p. 4, available online: <<http://www.iaaw.ca/wp-content/uploads/2018/02/Cardinal-Inquiry-IAAW-and-LEAF-Final-Submission-Oct-15.pdf>>. Citing to Tina Hotton Mahoney, Joanna Jacob and Heather Hobson, “Women in Canada: A Gender Based Statistical Report: Women in the Criminal Justice System” Catalogue No 89-503-X (Ottawa: Statistics Canada, 2017). Available online: <<http://www.statcan.gc.ca/pub/89-503-x/2015001/article/14785-eng.pdf>>, at 8, 16, and 24.

⁴² See, e.g., Roger Collier, “Reports of Forced Sterilization of Indigenous Women in Canada Mirror Shameful Past”, *Canadian Medical Association Journal (CMAJ)*, Vol. 21, Issue 33 (Aug. 2017). Available online: <<http://www.cmaj.ca/content/189/33/E1080>>.

⁴³ See Bartlett & Boyer, 2017, *supra* note 30 at 31.

⁴⁴ The Canadian Press, “Saskatoon Health Region apologizes to Indigenous women pressured into tubal ligation surgery”, *The Star* (27 July 2017). Available online: <<https://www.thestar.com/news/canada/2017/07/27/saskatoon-health-region-apologizes-to-indigenous-women-pressured-into-tubal-ligation-surgery.html>>.

⁴⁵ 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. Available online: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F6%2FCAN%2FCO%2F6>.

⁴⁶ 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. Available online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/062/37/PDF/G1606237.pdf?OpenElement>>.

concluding observations⁴⁷ on periodic reviews of Canada which include comments on violence against Indigenous women.⁴⁸

Assessment

The reports of international human rights bodies have made clear that Canada needs to have a well thought out, concerted, and sustained effort to curtail violence against Indigenous women and girls. In its 2015 report, the CEDAW Committee stated explicitly that all its recommendations had “to be considered and implemented as a whole, including the recommendation to improve the socioeconomic situation” of Indigenous women.⁴⁹ This statement echoes the IACHR recommendation that a comprehensive approach is required.⁵⁰

Rather than approach the international bodies' recommendations as a whole, Canada has focused on the creation of a National Inquiry into Murdered and Missing Indigenous Women and Girls in Canada, appointed for a two year term ending in December 2018.⁵¹ In an August 2016 follow-up hearing by the IACHR, when asked about the numerous recommendations in the IACHR and CEDAW reports other than the National Inquiry, the Ambassador for Canada responded that the Inquiry is “the tool we have” to move forward and address those issues, thus suggesting that the Inquiry can stand in for taking simultaneous and coordinated action to move forward on all the other IACHR and CEDAW recommendations. LSC rejects this suggestion, particularly given concerns and shortcomings with the Inquiry, as laid out below. Appointment of the Inquiry may have been necessary, but it is not sufficient.

Concerns Regarding the National Inquiry

The LSC advocated for the creation of a national inquiry, and for a coordinated approach between the provinces, territories, and the federal government in such an inquiry.⁵² This coordinated approach was adopted, with Canada and all provinces and territories passing Orders-

⁴⁷ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9, 18 November 2016. Available online: <https://www.cwp-csp.ca/resources/sites/default/files/resources/CEDAW_C_CAN_CO_8-9_25100_E_0.pdf>; Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, CERD/C/CAN/CO/21-23 (13 September 2017). Available on-line: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCAN%2fCO%2f21-23&Lang=en>..

⁴⁸ See relevant text in appendices.

⁴⁹ CEDAW, 2015, *supra* note 1 at para 216.

⁵⁰ IACHR, 2014, *supra* note 2 at para 306.

⁵¹ The Inquiry has requested a two-year extension to complete its mandate by the end of 2020.

⁵² Legal Strategy Coalition on Violence Against Indigenous Women, *Statement on the importance of full provincial and territorial cooperation with the upcoming national inquiry on Missing and Murdered Indigenous Women and Girls* (2016). Available online: <<http://www.leaf.ca/wp-content/uploads/2016/04/2016-04-25-LSC-statement-re-provincial-and-territorial-involvement-in-MMIWG-inquiry-final.pdf>>.

in-Council to establish the Inquiry in 2016. While members of the LSC welcomed the Inquiry's creation, there are significant concerns with its work to date.

Immediately upon the Inquiry's establishment, NWAC, FAFIA, Amnesty International, and Dr. Pamela Palmater, Chair in Indigenous Governance at Ryerson University, expressed concerns with its mandate and terms of reference.⁵³ The Inquiry terms of reference did not make an explicit requirement that it adopt a human rights framework, merely naming a "human rights lens" as one perspective the Inquiry should adopt. Although more recent Commission documents – *Research Plan*⁵⁴ and *Paths of Inquiry*⁵⁵ – contain reference to human rights, this falls short of adopting a human rights framework. Although it planned to have an expert hearing in 2017 on what a human rights lens would entail, the Inquiry did not do so.

The mandate of the Inquiry requires it to examine systemic causes of violence against Indigenous women and girls, and it was well documented that the systems requiring investigation include police. However, the mandate contains no explicit reference to police and the criminal justice system. FAFIA and NWAC have commented:

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.⁵⁶

The Inquiry's poor planning and organization have resulted in there being only one hearing on police policies and practices, now scheduled for the summer of 2018 and it is not possible to discern if it has done any research on the police in its own internal program.

The omission of a strong mandate to examine police behaviour is very concerning given persistent and recognized failings of police to protect Indigenous women. The Province of British Columbia established a Commission of Inquiry in September 2010 to look into the police investigations conducted between January 23, 1997 and February 5, 2002 regarding women

⁵³ 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> >

⁵⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Research Plan*, 2017. Available at: <<http://www.mmiwg-ffada.ca/files/research-plan.pdf>>.

⁵⁵ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Paths of Inquiry*, 2017. Available online at: <<http://www.mmiwg-ffada.ca/files/paths-of-inquiry.pdf>>.

⁵⁶ Canadian Feminist Alliance for International Action and Native Women's Association of Canada, *Reply to Issue 17: Implementation of CEDAW Recommendations from Article 8 Inquiry on Missing and Murdered Indigenous Women and Girls* (October 2016) at p. 6 [FAFIA & NWAC, 2016]. Available online: <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGO_CAN_25418_E.pdf>.

reported missing from the Downtown Eastside of the city of Vancouver. In his 2012 report, Commissioner Wally Oppal QC explained that, while Indigenous women comprise only 3% of the province’s population, 33% of the murdered and missing women whose cases he reviewed were Indigenous.⁵⁷ He stated, “The systemic bias operating in the missing women investigations was a manifestation of the broader patterns of systemic discrimination within Canadian society and was reinforced by the political and public indifference to the plight of marginalized female victims.”⁵⁸ One of IACHR recommendations was full implementation of the Oppal report recommendations⁵⁹. CEDAW has also recommended that the terms of reference of the National Inquiry be complemented to ensure the use of a human rights based approach and to:

- a) Ensure that the mandate of the inquiry clearly covers the investigation of the role of the Royal Canadian Mounted Police, Provincial police, Municipal police, and public complaints commissions across federal, provincial, and municipal jurisdictions; and
- b) Establish a mechanism for the independent review of cases where there are allegations of inadequate or partial police investigations.⁶⁰

A February 2013 report by Human Rights Watch shed light on the extent to which systemic bias has created impunity for police abuse of Indigenous women in northern British Columbia.⁶¹ Beyond failing to protect Indigenous women from violence, the RCMP was committing acts of violence against these women. Two years later, many provinces away, Indigenous women in the town of Val d’Or, Quebec, went public about numerous incidents of abuse, including sexual assault, by provincial police between 2001 and 2015. After initial investigation, the Crown prosecutors decided not to lay any charges. The president of Quebec Native Women responded by stating, “We feel anger. We feel injustice. The message we’re left with is that justice simply doesn’t apply to us.”⁶² A more recent study by Human Rights Watch in Saskatchewan uncovered similar accounts of police abuse of Indigenous women, and documents “entrenched and institutionalized stereotyping of Indigenous women by the police.”⁶³ Systemic racism by the

⁵⁷ Oppal Report, *supra* note 23 at p. 14.

⁵⁸ *Ibid* at p. 94.

⁵⁹ IACHR, 2014, *supra* note 2 at para 312.

⁶⁰ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9, 18 November 2016, available online: <https://www.cwp-csp.ca/resources/sites/default/files/resources/CEDAW_C_CAN_CO_8-9_25100_E_0.pdf>.

⁶¹ 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). Available online: <<https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>>.

⁶² Quote reproduced in Ingrid Peritz, “Aboriginal women ‘feel anger’ no charges laid against Val-d’Or officers”, *The Globe and Mail* (18 November 2016; updated 7 April 2017). Available online: <<https://www.theglobeandmail.com/news/national/two-retired-quebec-police-officers-charged-after-val-dor-assault-investigations/article32928990/>>.

⁶³ Human Rights Watch, 2017, *supra* note 9.

police in Thunder Bay Ontario has been implicated in the deaths of students from northern reserves attending high school in the city.⁶⁴

Regarding the National Inquiry, FAFIA and NWAC also expressed concern that there “is no mechanism for independent review of individual cases where there are outstanding concerns over the adequacy or impartiality of police investigations.”⁶⁵ 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”.⁶⁶ As FAFIA and NWAC have stated, “This appears to be sending families back in a circle, to the same authorities with whom they were/are having problems to start with.”⁶⁷ Moreover, there are significant concerns, since many of the cases are historic and time limits in programs to investigate police behaviour or about individual officers' conduct can be very short. An independent review of individual cases should be available through an independent process which the Commissioners design and oversee, at least initially. In July of 2017, the Inquiry issued a statement that it had a “forensic team reviewing police files”, and in September of

⁶⁴In July 2017, the Ontario Civilian Police Commission appointed Senator Murray Sinclair to lead an investigation into the Thunder Bay Police Services Board, in light of “serious concerns about the state of civilian police oversight and public confidence in the delivery of police services in Thunder Bay”, including specifically in regards to “a recent series of deaths of Indigenous youth and the quality of the investigations into these deaths conducted by the Thunder Bay Police Service” (see press release online: <<http://www.slasto.gov.on.ca/en/OCPC/Documents/TBPSB%20-%20Press%20Release%20-%20Investigator%20-%20FINAL%20-%20EN.htm>>). In his interim report in November 2017, Senator Murray Sinclair noted that “concerns about the intersection of racism, systemic racism, and policing in Thunder Bay are not new”, and explained the investigation he is overseeing “will deal with a relatively small part of what appears to be a much larger problem in Thunder Bay; yet a part that may be a significant contributing factor. It will deal with the role that the TBPSB [Thunder Bay Police Services Board] plays in relation to the allegations of systemic racism in the entire policing system in Thunder Bay”: *Investigation of the Thunder Bay Police Services Board Pursuant to Section 25 of the Police Services Act – Interim Report of the Honourable Murray Sinclair submitted to the Executive Chair, Ontario Civilian Police Commission October 31, 2017* available online: <<http://www.slasto.gov.on.ca/en/OCPC/Documents/Final%20TBSPB%20Interim%20Report%20-%20Oct%2031%20-%202017.pdf>>. A final report is expected in August 2018. The Office of the Independent Police Review Director is currently conducting a systemic review into Thunder Bay Police Service Practices as they Relate to Indigenous Death and Missing Person Investigations (for more information see online: <<http://www.oiprd.on.ca/EN/News/Pages/Systemic-Reviews.aspx>>), which was expanded following the May 2017 deaths of another two Indigenous teens (<https://www.tbnewswatch.com/local-news/police-board-responds-to-oiprd-review-623896>). See also Ontario, Office of the Chief Coroner, *Verdict of Coroner's Jury - Inquest into the deaths of: Jethro Anderson, Curran Strang, Paul Panacheese, Robyn Harper, Reggie Bushie, Kyle Morrisseau, and Jordan Wasasse* (28 June 2016). Available online: <<https://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/Inquests/VerdictsandRecommendations/OCCVerdictsSevenFirstNationsYouths.html#EducationStructure>>; See also CBC News, “Thunder Bay and First Nations sign pledge to address racism and student safety”, *CBC* (1 August 2017). Available online: <<http://www.cbc.ca/news/canada/thunder-bay/statement-of-commitment-1.4230192>>.

⁶⁵ FAFIA & NWAC, 2016, *supra* note 55 at p. 7.

⁶⁶ Indigenous and Northern Affairs Canada, *Terms of Reference*, at item “m”. Available online at: <<https://www.aadnc-aandc.gc.ca/eng/1470422455025/1470422554686>>. Quote also reproduced in FAFIA & NWAC, 2016, *supra* note 55 at p. 7.

⁶⁷ FAFIA & NWAC, *supra* note 55 at p. 7.

2017⁶⁸, the Commissioners explained they had put together a team of forensic investigators who were conducting systemic review of police cases.⁶⁹ However, some sources say that there was not in fact a forensic team conducting work as announced in July 2017⁷⁰, and as of February 2018, police agencies in at least eight major cities told journalists they had not been contacted by Inquiry regarding files.⁷¹

The B.C. Coalition on Missing and Murdered Women, among others, has pointed out that the B.C. Order-in-Council adopts the terms of reference drafted by Canada, with some restrictions, including that the Inquiry may not in B.C. inquire into any matter involving prosecutorial discretion⁷². This is an unfortunate omission. It was the prosecutor in the *Barton* case who asked leave of the court to introduce Ms. Gladue's uterus into the proceedings. It is the prosecutor who decides what charges will proceed to trial; the wrong decision could leave a family and community feeling that there is no justice for them.

There is widespread support for the continued importance of affected families and survivors having the opportunity to have their voices heard. However, a large number of affected families, as well as organizations granted standing at the National Inquiry, have also publicly expressed serious concerns about the Inquiry including about inadequate communications with families and the public, inadequate participant and witness support for family members and survivors, and risks of re-traumatization of witnesses. In May 2017, an alliance of concerned individuals and civil society organizations issued an open letter to the Chief Commissioner expressing lack of confidence in the current direction of the Inquiry.⁷³ Understandably, there is no consensus among families and loved ones of Missing and Murdered Indigenous Women, Girls, Trans and Two-Spirit People (MMIWGT2S) on such a complex matter.

There is also concern that many Indigenous women's organizations will have little or no role in the Inquiry because most applied for, and were granted, regional standing. Since no regional

⁶⁸ National Inquiry into Missing and Murdered Indigenous Women and Girls, *National Inquiry has forensic team reviewing police files* (July 27, 2017). Available online: <<http://www.mmiwg-ffada.ca/files/national-inquiry-has-forensic-team.pdf>>.

⁶⁹ E.g. see National Inquiry into Missing and Murdered Indigenous Women and Girls, *National Inquiry Statement to the Standing Senate Committee on Aboriginal Peoples* (20 September 2017). Available online: <<http://www.mmiwg-ffada.ca/files/mmiwg-statement-to-standing-committee.pdf>>.

⁷⁰ Nancy Macdonald and Meagan Campbell, "Lost and broken", *Macleans* (13 September 2017). Available online: <<http://www.macleans.ca/lost-and-broken/>>.

⁷¹ Maura Forrest, "Police agencies across Canada say MMIW inquiry has not asked for case files to review", *National Post* (13 February 2018). Available online: <<http://nationalpost.com/news/politics/police-agencies-across-canada-say-mmiw-inquiry-has-not-asked-for-case-files-to-review>>.

⁷² *British Columbia Commission Of Inquiry Into Missing And Murdered Indigenous Women And Girls Order*, s. 4(2)(b), online: <http://www.bclaws.ca/civix/document/id/oic/oic_cur/0802_2016>. This concern was raised by NWAC and FAFIA at the IACHR follow-up hearing of December 9, 2016: December 2016 IACHR Follow-Up Hearing, *supra* note 35.

⁷³ *Open Letter to Chief Commissioner Marion Buller, National Inquiry into Missing and Murdered Indigenous Women and Girls* (15 May 2017). Available on-line: <<http://christibelcourt.com/open-letter-to-chief-commissioner-marion-buller-national-inquiry-on-missing-and-murdered-indigenous-women-and-girls/>>.

hearings are scheduled, it is not clear how the expertise of these organizations about conditions and practices in their regions will be canvassed. In August 2017 parties with national standing identified a number of issues that needed to be addressed to ensure that the Inquiry would be conducted “in an orderly way that ensures that participants will be treated fairly, and will function in an environment that allows them to make their best contribution to the serious problems under study.”⁷⁴ Those issues have not been addressed.⁷⁵

In addition, a series of resignations of senior leaders over sixteen months has caused concern about the stability of the Inquiry. These resignations include Commissioner Marilyn Poitras (July 2017), the Director of Communications (June 2017), two Executive Directors (July 2017 and January 2018), Lead Commission Counsel (October 2017), Director of Research (October 2017), and several other key employees.

In March 2018, the Inquiry requested an extension of two years and an additional \$50 million in its budget. There has been a mixed response to this request⁷⁶, showing that the Inquiry has managed to garner only tepid public support during the first year and a half of its existence. Governments have not yet made a decision about this request, and at present the Inquiry is scheduled to conclude in December 2018.

Concerns Regarding Failure to Address Root Causes of Violence

The IACHR observed in its *Report on Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*:

The disappearances and murders of Indigenous women in Canada are part of a broader pattern of violence and discrimination against indigenous women in Canada. The fact that Indigenous women in Canada experience institutional and structural inequalities resulting from entrenched historical discrimination and inequality is acknowledged by the Government of Canada and by civil society organizations. There is also agreement on certain root causes of the high levels of violence against indigenous women and the existing vulnerabilities that make indigenous women more susceptible to violence”. Vulnerabilities consistent primarily of low socio-economic status indicators.⁷⁷

⁷⁴ *Concerns of Non-Governmental Organizations with Standing before the Inquiry* (23 Aug 2017). <<http://fafia-afai.org/wp-content/uploads/2017/10/2017-08-23-joint-NGO-letter-to-Chief-CommissionerFINAL.pdf>>

⁷⁵ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Ruling on Standing and Funding* (17 August 2017). Available online: <<http://www.mmiwg-ffada.ca/files/standing-and-funding-decision-english.pdf>>.

⁷⁶ E.g. see Geordon Oman, “Indigenous leaders divided over MMIW inquiry’s request for a two-year extension”, *The Toronto Star* (7 March 2018). Available online: <<https://www.thestar.com/news/canada/2018/03/07/indigenous-leaders-mixed-over-mmiw-inquirys-request-for-a-two-year-extension.html>>.

⁷⁷ IACHR, 2015, *supra* note 2 at para 305; see also at paras 77-89.

The role of *Indian Act* discrimination against women in rendering them hyper-vulnerable has often been illuminated by civil society actors, activists, and academics, and international human rights bodies have frequently called for removal of such discrimination. Canada purported to remove sex discrimination by means of 1985 legislation, said to have been motivated both by CEDAW and also the new *Canadian Charter of Rights and Freedoms*. However, these amendments did not remove, or make amends for, the past privileging of men in determinations of who could confer status, and several cases since 1985 have successfully challenged provisions which continue to discriminate. Canada so far has been unwilling to undertake a comprehensive overhaul of discriminatory provisions, preferring to wait for the outcome of particular court cases. However, Canada's response to these cases repairs only the provisions targeted in the Court ruling. This has produced only partial elimination of the old discrimination in the *Indian Act*, and the nature of the changes has installed in the *Act* new kinds of discrimination against women. Overall, the effect of the legislation has been the exclusion of women and their descendants from their families and communities on reserve, sending them into environments where they will be more vulnerable to violence.

In the summer of 2017, advocates tried to get the Government of Canada to accept an amendment to its latest amending legislation, Bill S-3, which would have removed all past discrimination based on gender. This amendment received support in the Senate, but the government eventually defeated it. The Government of Canada now proposes to conduct a nationwide consultation about what further amendments should be made to the *Indian Act*, in spite of advocates' arguments that it is inappropriate to consult on whether discrimination should be removed or continued.⁷⁸

Whether they live on or off reserve, Indigenous women disproportionately experience conditions of poverty. In its concluding observations in 2016, CEDAW made extensive recommendations concerning the socio-economic status of Indigenous women. The Canadian government has had knowledge of low socio-economic indicators, of underfunding, and of jurisdictional issues for decades.⁷⁹

The Supreme Court of Canada has consistently held that the guarantee of the equal benefit of the law in section 15 of the *Canadian Charter of Rights and Freedoms* does not impose positive obligations on governments to create conditions of equality, and consequently governments are not required to enact laws or policies that would confer social and economic benefits to address known disadvantage. The only requirement is that if government decides to legislate, it must do so without discrimination. However, in applying this test, the Court has given the government

⁷⁸ E.g. see Sharon McIvor, Pamela Palmater, and Shelagh Day, "Equality Delayed is Equality Denied for Indigenous Women", *Policy Options* (5 December 2017). Available online: <<http://policyoptions.irpp.org/magazines/december-2017/equality-delayed-is-equality-denied-for-indigenous-women/>>.

⁷⁹ example.g. see Department of National Health and Welfare, *Study of health services for Canadian Indians* (Ottawa, ON: 1969).

broad leeway to make distinctions between classes of persons, only invalidating legislation where it would not be too costly to do so.⁸⁰ It is thus questionable whether the government of Canada could be compelled to remediate the socio-economic disadvantage of Indigenous women by means of litigation. It is an open question whether the section 15 guarantee of the equal protection of the law might require government to remove or remediate those elements of the criminal law and legal system which disadvantage Indigenous peoples, although the statement in section 15 that every individual is entitled to the equal protection of the law without discrimination should mean that individuals are entitled to the protection of the law without the distorting effects of systemic discrimination, bias and stereotype.

Concerns Regarding Implementation and Monitoring

Implementation of international human rights treaties and recommendations of treaty bodies is highly problematic in Canada. The federal system means that both the national government and also those of the provinces and territories must act in order to ensure that all recommendations are addressed. Although there is a structure for the regular convening of meetings of these governments, there is little or no history of concerted, unified action in order to accomplish socio-economic goals. While Canada has jurisdiction over both the criminal law and also Indigenous peoples, making criminal law reforms more centralized, the provinces and territories have jurisdiction over the administration of justice and many have their own police forces in the province, or in major provincial cities.

This co-ordination problem is made more acute by the fact that Canada lacks a formal internal mechanism to implement the obligations in treaties, which apply to all levels of government. Heritage Canada is responsible for reviewing Canada's position so as to report to the Treaty bodies, and leads delegations to Geneva, but there is no Ministry or government focal point for implementation of recommendations issued by Treaty bodies and other UN and regional human rights experts. Nor are recommendations from Treaty bodies and experts reviewed by Parliament. The result is that these valuable recommendations vanish, and there is no mechanism for accountability or response.

CEDAW recently recommended that Canada put in place a monitoring mechanism so that Indigenous women and the broader public know what governments are doing to address failures of the legal system and social programs to protect Indigenous women and girls. Such a mechanism would usefully be paired with a process to respond to the recommendations of Treaty monitoring bodies, coordinating government action and affording more publicity to both the recommendations and Canada's response. The establishment of the National Inquiry by means of Orders-in-Council from Canada and all the provinces and territories shows that the various

⁸⁰ *Auton (Guardian ad litem of) v British Columbia (Attorney General)*, [2004] 3 S.C.R. 657; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624, 1997 CanLII 327 (SCC); *Vriend v. Alberta*, [1998] 1 S.C.R. 493.

jurisdictions in the country can act in concert with respect to violence against Indigenous women and girls. Any monitoring mechanism or mechanism to respond to the recommendations of Treaty bodies must be a cooperative venture between the federal government and the provinces and territories.

Conclusion and Recommendations

Despite years of advocacy by Indigenous women, and allies, there has been little action by Canadian governments to create safety and equality for Indigenous women and girls. Indigenous women and girls do not enjoy the equal protection and equal benefit of the law that the *Charter of Rights and Freedoms* promises them. Strategic and co-ordinated action by governments is urgently needed to address the profound failures of the justice system to provide protection and justice, and of social programs and services to provide adequate and equal living conditions.

Canada should without further delay:

1. Pass legislation removing the remaining discrimination from the *Indian Act*.
The goals of such legislation should be:
 - (a) to repair past discrimination by entitling women to full 6(1)(a) status on the same footing as their male counterparts, making women and men equal in the ability to pass on status, and repairing situations where discrimination against women has disadvantaged those claiming status through the female line, and
 - (b) to remove from the *Indian Act* the 1985 amendments, like the two-parent rule for transmitting status and the "6(2) cutoff" which withholds status from the children of many women who cannot or will not provide the name of the father.
2. These amendments should be accompanied by provision of adequate resources to handle the increased demand on First Nations for services, including housing.
3. Consider criminalizing forcible sterilization in the imminent review of the *Criminal Code* of Canada.

Canada and the provinces and territories should immediately:

4. Implement legislative and administrative changes and allocate resources to address the disadvantaged socio-economic status of Indigenous women and their families.
 - (a) These changes should include provision of adequate housing on reserves, in Inuit settlements, and in cities,
 - (b) increased funds for education and child welfare on reserves,
 - (c) ensuring that supplies of untainted water are available in all reserves and

settlements,

(d) redesign of child welfare and foster care systems and practices to ensure that they support and protect Indigenous women and girls and their families,
(e) access to adequate legal aid, and to rates of social assistance that, at least, meet the poverty line.

5. Review police policies and procedures with a view to repair of any provisions or patterns that are conducive to violence against Indigenous women and girls, including LGBTQ and two-spirit people.
6. Review the processes currently in place for making complaints against the police, ensuring that any complaint will be dealt with in a timely fashion, and investigated by an independent body, not the police themselves as is currently the case in almost all Canadian jurisdictions.
7. Establish a forensic review of cases which have raised concerns about systemic or individual discrimination should be established.
8. Establish a review of prosecutorial practices to ensure that charges conform to the evidence available (to avoid acquittals like those in the Tina Fontaine and Colten Bushie cases) and to educate Crown Attorneys on elements of discrimination and their duty to avoid it when conducting trials (to avoid treatment like that accorded Cindy Gladue).
9. Establish a monitoring mechanism, as recommended by the CEDAW Committee, to publicly track the steps taken to address the murders and disappearances of Indigenous women and girls, in conjunction with an action plan against which such steps can be measured. The action plan should reflect Canada's commitment to the U.N. Declaration on the Rights of Indigenous Peoples, as well as the Convention on the Rights of the Child and CEDAW.
10. Establish a mechanism to coordinate implementation of Treaty body and IACHR recommendations and to collect and make public information about the steps being taken to implement the recommendations of such bodies.

APPENDICES

1. IACHR CONCLUSIONS AND RECOMMENDATIONS FROM ITS DECEMBER 2015 REPORT ON MURDERED AND MISSING INDIGENOUS WOMEN IN BRITISH COLUMBIA

304. The IACHR makes the following recommendations, based on its close analysis of the situation of missing and murdered indigenous women in British Columbia. The IACHR notes the willingness and openness of the Canadian State, at both the federal and provincial levels, to discuss the situation, its causes, and how it can be further addressed. The IACHR also recognizes the steps already taken by the Canadian State, at both the federal and provincial levels, to address some of the particular problems and challenges that indigenous women and girls in Canada, and British Columbia specifically, must confront, a number of which have been identified in this report.

305. The disappearances and murders of indigenous women in Canada are part of a broader pattern of violence and discrimination against indigenous women in Canada. The fact that indigenous women in Canada experience institutional and structural inequalities resulting from entrenched historical discrimination and inequality is acknowledged by the Government of Canada and by civil society organizations. There is also agreement on certain root causes of the high levels of violence against indigenous women and the existing vulnerabilities that make indigenous women more susceptible to violence.

306. 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. These measures must incorporate the provision of information and assistance to ensure that indigenous women have effective access to legal remedies in relation to custody matters. Specifically regarding Prince George, the IACHR urges the Canadian State to immediately provide a safe public transport option along Highway 16.

307. The IACHR recognizes the existence of a wide variety of initiatives to address the situation of violence against indigenous women in Canada. However, based on the information received and analyzed, the IACHR strongly urges the need for better coordination among the different levels and sectors of government. The IACHR stresses that both federal and provincial governments are responsible for the legal status and conditions of indigenous women and girls and their communities.

308. Initiatives, programs and policies related to indigenous women should be tailored to their needs and concerns, including whether they are living on reserve or off reserve. Their consultation is crucial for the success of any initiative, especially given the context of historical and structural discrimination. In this regard, Canada should adopt measures to promote the active participation of indigenous women in the design and implementation of initiatives, programs and policies at all levels of government that are directed to indigenous women, as well as those that pertain to indigenous peoples more broadly. The selection of indigenous women to participate in these initiatives should be made in consultation with recognized associations of indigenous peoples and of indigenous women and their leadership.

309. The IACHR strongly supports the creation of a national-level action plan or a nation-wide inquiry into the issue of missing and murdered indigenous women and girls, in order to better understand and address the problem through integral approaches. The IACHR considers that there is much more to understand and to acknowledge in relation to the missing and murdered indigenous women. This initiative must be organized in consultation with indigenous peoples, particularly indigenous women, at all stages from conception, to establishing terms of reference, implementation and evaluation.

310. The IACHR recommends the development of data collection systems that collect accurate statistics on missing and murdered indigenous women, by consistently capturing the race of the victim or missing person. Capturing accurate data is the basis for moving forward in any initiative.

311. The IACHR recommends that the State implement a policy aimed at ensuring an appropriate response when a report of a missing person, in particular an indigenous women, is filed.

312. The IACHR considers that full compliance with the already established recommendations of the Oppal report is necessary and will bring about important advances. Drawing from those recommendations, the IACHR stresses the importance of appointing a new Chair of the Advisory Committee on the Safety and Security of Vulnerable Women as soon as possible. Canada should ensure that the different policing services in BC understand their jurisdiction and responsibilities when conflicts of policing jurisdiction arise. Canada should also establish or strengthen accountability mechanisms – preferably through independent bodies – for officials handling investigations and prosecutions, and should provide access to legal aid and support services to

the families of missing or murdered indigenous women, with the families being able to freely choose their own representative.

313. The IACHR also recommends that police officers, including both RCMP and Vancouver Police, and public sector functionaries, such as prosecutors, judges and court personnel, 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.

314. Regarding the ongoing investigations of missing and murdered women, the IACHR stresses the importance of the principle of due diligence. In this regard, the State should:

- Give special judicial protection and guarantees to family members and relatives, especially by improving mechanisms to ensure that such parties have access to information about the development of the investigation and about their rights in any legal proceedings. Effective access by indigenous people to such protection is especially important given the context of historical and structural discrimination.
- Guarantee that family members or other affected parties of missing and murdered indigenous women can obtain legal aid that is effective and with which these parties feel comfortable, again taking into account the context of discrimination and marginalization.
- Ensure adequate oversight of officials responsible for responding to and investigating crimes of violence against women, and ensure that administrative, disciplinary or criminal measures are available to hold such officials accountable.
- Provide indigenous women and their relatives who are seeking assistance from officials with an available and effective procedure to file complaints in the case of noncompliance by such officials with their duties under the law, and information on how to initiate and pursue that procedure.
- Provide integral social and support services to all family members of missing and murdered indigenous women, as well as to indigenous women who want to remove themselves from an abusive situation.
- Further develop the steps taken to provide reparations to families of missing and murdered indigenous women in cases where the State has failed to exercise due diligence.

315. In light of the State's commitment to improve the rights and circumstances of indigenous women, the IACHR hopes that the conclusions and recommendations offered in this report may assist the State in putting its commitment into practice.

2. CEDAW 2016 CONCLUDING OBSERVATIONS

Gender-based violence against women

24. The Committee notes with appreciation that the Minister of Status of Women is currently working with other ministers to develop a federal strategy against gender-based violence. It also notes a number of federal criminal laws, complemented by provincial and territorial civil laws and policies, addressing gender-based violence against women, including against indigenous women and girls. Nevertheless, the Committee is concerned about:

- (a) The continued high prevalence of gender-based violence against women in the State party, in particular against indigenous women and girls;
- (b) The very low number of cases of gender-based violence against women reported to the police by victims;
- (c) The low rates of prosecution and conviction and the lenient penalties imposed on perpetrators of gender-based violence against women;
- (d) The lack of a national action plan, bearing in mind that the strategy will apply only at the federal level;
- (e) The lack of shelters, support services and other protective measures for women who are victims of gender-based violence, which reportedly prevents them from leaving their violent partners;
- (f) The lack of statistical data on gender-based violence against women, including domestic violence, in particular on investigations, prosecutions, convictions, sentences and reparation;
- (g) [...]

25. Recalling its general recommendation No. 19 (1992) on violence against women, the Committee recommends that the State party:

[...](d) Expeditiously adopt a national action plan, in consultation with civil society organizations, especially indigenous women's organizations, to combat gender-based violence against women and ensure that adequate human, technical and financial resources are allocated for its implementation, monitoring and assessment;

[...]

Murdered and missing indigenous women and girls

26. The Committee commends the State party's decision in 2015 to establish a National Inquiry into Missing and Murdered Indigenous Women and Girls, which was one of the main recommendations of the Committee's inquiry conducted in 2013 (CEDAW/C/OP.8/CAN/1). However, it is concerned about:

- (a) The absence of any action plan or coordinated mechanism to oversee the implementation of the outstanding 37 recommendations issued by the Committee in 2015 (CEDAW/C/OP.8/CAN/1, paras. 216-220);
- (b) The insufficient measures taken to ensure that all cases of missing and murdered indigenous women are duly investigated and prosecuted;
- (c) The Terms of Reference of the national inquiry, which do not clearly require the application of a human rights based approach as called upon by the Canadian Human Rights Commission and which does not include any explicit mandate to review policing policies and practices and the criminal justice system, and does not provide any mechanism for the independent review of alleged cases of inadequate or partial police investigations;
- (d) The lack of an explicit assurance of adequate support and protection provided to witnesses, and the lack of sufficient cooperation with indigenous women's organizations in the process of establishing the inquiry.

27. The Committee recommends that the State party fully implement, without delay, all recommendations issued by the Committee in the 2015 report on its Canada inquiry (CEDAW/C/OP.8/CAN/1, paras. 216-220), and:

- (a) Develop an coordinated plan for the overseeing of the implementation of the outstanding 37 recommendations issued by the Committee in its report (CEDAW/C/OP.8/CAN/1, paras. 216-220), and by working in cooperation, as appropriate, with the Commission of the national inquiry, as well as indigenous women and their organizations, women's human rights organizations, and provincial and territorial governments;
- (b) Ensure that all cases of missing and murdered indigenous women are duly investigated and prosecuted;
- (c) Complement the Terms of Reference of the national inquiry to:
 - i. Ensure the use of a human rights based approach;
 - ii. Ensure that the mandate of the inquiry clearly covers the investigation of the role of the Royal Canadian Mounted Police, Provincial police,

Municipal police, and public complaints commissions across federal, provincial, and municipal jurisdictions;

iii. Establish a mechanism for the independent review of cases where there are allegations of inadequate or partial police investigations;

(d) Ensure adequate support and protection to witnesses and strengthen the inclusive partnership with indigenous women's organizations and national and international human rights institutions and bodies during the conducting of the inquiry and in its implementation process.

Root causes of violence and discrimination against indigenous women

28. The Committee is concerned about the fact that indigenous women continue to suffer from multiple forms of discrimination, particularly as regards their access to employment, housing, education and health care and continue to live in poverty in the State party, as reflected by high poverty rates, poor health, inadequate housing, lack of access to safe water, low school-completion rates. It further notes with concern the low participation of indigenous women in the labour market, in particular in senior or decision-making positions, their disproportionately high unemployment rates and their lower pay compared with men and non-indigenous women. The Committee notes the State party's commitment to fully implement the United Nations Declaration on the Rights of Indigenous Peoples (2007). However, it remains concerned about the lack of a coherent plan or strategy to improve the socioeconomic conditions of indigenous communities, in particular indigenous women to combat the root cause of their vulnerability to violence as well as the lack of measures to break the circle of distrust between the authorities and indigenous communities, as was established by the Committee's inquiry (CEDAW/C/OP.8/CAN/1, paras. 218-219).

29. The Committee recommends that the State party, in consultation with indigenous peoples:

(a) Develop a specific and integrated plan for addressing the particular socioeconomic conditions affecting aboriginal women, both on and off reserves, including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence, and take effective and proactive measures, including awareness-raising campaigns, to sensitize aboriginal communities about women's human rights and to combat patriarchal attitudes and gender stereotypes;

(b) Implement the recommendations made by the Special Rapporteur on the rights of indigenous peoples following his mission to Canada in 2013 (see A/HRC/27/52/Add.2);

- (c) Promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) Ratify ILO Convention No. 169 (1989) on indigenous and tribal peoples.

3. CERD 2017 CONCLUDING OBSERVATIONS

Violence against indigenous women and girls

23. The Committee is alarmed at the continued high rates of violence against indigenous women and girls in the State party. While welcoming the 2016 launch of the National Inquiry into Missing and Murdered Indigenous Women and Girls, the Committee is concerned at the lack of an independent mechanism to re-examine cases where there is evidence of inadequate or biased investigations, and at the failure to provide regular progress reports and to build transparent and accountable relationships with survivors, families and stakeholders (arts. 2, 5 and 6).

24. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party:

- (a) Take immediate action to end violence against indigenous women and girls. Provide support and access to equal services for survivors. Enact a national action plan on violence against women, inclusive of the federal, provincial and territorial jurisdictions, with special provisions to end the high rates of violence against indigenous women and girls;
- (b) Apply a human rights-based approach to the Inquiry by examining the issues holistically to identify barriers to equality and their root causes and to recommend lasting solutions. Monitor progress to achieve these recommendations, with the participation of affected survivors, families and stakeholders;
- (c) Establish an independent review mechanism for unsolved cases of missing and murdered indigenous women and girls where there is evidence of bias or error in the investigation;
- (d) Publicly report on violence against indigenous women and girls, including data on reported cases of violence, murder, and missing indigenous women and girls, and on the numbers of investigations, prosecutions and convictions;
- (e) Improve communication from the Inquiry and build transparent and accountable relationships with survivors, families and stakeholders.