



Indigenous Women and Girls in Canada

Report to the Human Rights Council on Canada's Third Universal Periodic Review

Submitted in October 2017 by the Canadian Feminist Alliance for International Action (FAFIA) and the Ontario Native Women's Association (ONWA)

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Introduction

The Canadian Feminist Alliance for International Action (FAFIA) is an alliance of more than sixty Canadian women's organizations that was founded in February 1999. One of the central goals of FAFIA is to ensure that Canadian governments respect, protect, and fulfill the commitments to women that they have made under international human rights treaties and agreements.

The Ontario Native Women's Association (ONWA) is a not for profit organization that was established in 1971 to empower and support Indigenous women and their families throughout the province of Ontario.

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Sex Discrimination in the *Indian Act*

I. Canada's failure to implement recommendation 59 to abolish all sex discrimination in the *Indian Act*

In 2013, the Human Rights Council recommended that Canada eliminate all sex discrimination from the provisions of the *Indian Act* and grant women and men the same rights with regards to Indian status. Despite this, Canada has not yet removed all the sex discrimination from the *Indian Act*,¹ and this discrimination continues to affect thousands of First Nations women and their descendants.

II. History of Sex Discrimination

Since its inception in 1876, the *Indian Act* has accorded privilege to male Indians and their descendants, and treated female Indians and their descendants as non-persons, or second-class Indians. In 1906, the *Indian Act* defined an Indian as: a male Indian, the wife of a male Indian, or the child of a male Indian. Under successive versions of the *Indian Act*, for the most part, Indian women had no independent status or ability to transmit status to their descendants. There was a one-parent rule for transmitting status and the transmitting parent was male. Indian women lost status when they married a non-Indian, while Indian men endowed Indian status on their non-Indian wives.²

In 1985, when the *Charter* equality guarantees were about to come into force, the Government of Canada introduced Bill C-31 to make some amendments. But Bill C-31 did not remove the male-female hierarchy. In fact, it entrenched it by creating the category of 6(1)(a) for (mostly) male Indians and their descendants who already had full status prior to April 17, 1985, and the lesser 6(1)(c) category for women who had never had status because of the sex discrimination, or who had lost status because of marriage to a non-Indian.³ These women were considered "re-instatees." Post-1985, a new two-parent rule for transmitting status was imposed on both Indian men and Indian women, but it applied to the reinstated women immediately, while it was delay for another generation for the 6(1)(a) male line.⁴

¹ *Indian Act*, RSC 1985, c-15.

² Royal Commission on Aboriginal Peoples, Volume I, *Looking Forward, Looking Back*, pp. 251-262, online: <https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP1_combined.pdf?sequence=5&isAllowed=y>, Volume 4, *Perspectives and Realities*, pp. 20 - 43 online: <https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP4_combined.pdf?sequence=2&isAllowed=y>; see also, Shelagh Day, "153 years of sex discrimination is enough", *The Toronto Star* (10 January 2011) online: <https://www.thestar.com/opinion/editorialopinion/2011/01/10/153_years_of_sex_discrimination_is_enough.html>.

³ Bill C-31, *An Act to amend the Indian Act*, RSC 1985, c 32 (1st Supp).

⁴ Denise Stonefish, "Gender Discrimination in the *Indian Act*" *Policy Options* (25 November 2016) online: <<http://policyoptions.irpp.org/magazines/november-2016/gender-discrimination-and-the-indian-act/>>; Letter from Sharon McIvor to The Senate of Canada, The Right Honourable Justin Trudeau, The Honourable Carolyn Bennett, and The Honourable

Further, the hierarchy entrenched by Bill C-31 means that many Indian women can never have s. 6(1)(a) status, even though a brother, with the same parents, can. Consigning women to 6(1)(c) status has devalued them, treated them as lesser parents, and denied them the legitimacy and social standing associated with full s. 6(1)(a) status. Throughout the years, the so-called "Bill C-31 women" have been treated as though they are not truly Indian, or 'not Indian enough,' less entitled to benefits and housing, and obliged to fight continually for recognition by male Indigenous leadership, their families, communities, and broader society. In many communities, registration under section 6(1)(c) is a 'scarlet letter' – an announcement to other community members that they are lesser Indians.

Bill C-3, *An Act to promote gender equity in Indian registration*⁵ (which was the 2010 response of the Harper government to the *Mclvor v. Canada* decision) also failed to eliminate the sex discrimination from the *Indian Act*. It permitted the descendants of some Indian women born after September 5, 1951 and before April 17, 1985 to extend transmission of status for one more generation, to their grandchildren, as their male counterparts could. But it introduced a new limitation because Indian women and their descendants born prior to September 5, 1951 were now specifically excluded from entitlement to status, even though their male counterparts were not. It also left the heart of the sex discrimination inherent in the 6(1)(a) - 6(1)(c) hierarchy in place.

Since 1985, the deeply rooted sex discrimination has spawned a generation of litigation, including *Mclvor v. Canada*,⁶ *Matson v. Canada*,⁷ *Descheneaux v. AG Canada*,⁸ and *Gehl v. Canada*.⁹ None of these cases would have been necessary if Indian women and their descendants had been put on an equal footing with Indian men and their descendants in Bill C-31.

III. Bill S-3, An Act to amend the *Indian Act* (elimination of sex-based inequities in registration)

Jody Wilson-Raybould (26 May 2017) Re: APPA 6(1)(a) Amendment to Bill S-3, online: <<http://fafia-afai.org/wp-content/uploads/2017/06/Mclvor-letter-May-26.pdf>>.

⁵ *Gender Equity in Indian Registration Act, An Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision in Mclvor v. Canada (Registrar of Indian and Northern Affairs)*, online: <<https://openparliament.ca/bills/40-3/C-3/>>.

⁶ *Mclvor v Canada*, 2009 BCCA 153, 91 BCLR (4th) 1, online: <<http://www.courts.gov.bc.ca/jdb-txt/ca/09/01/2009bccca0153err2.htm>>.

⁷ *Matson v Indian and Northern Affairs Canada*, 2013 CHRT 13.

⁸ *Descheneaux v Canada (Procureur Général)*, 2015 QCCS 3555 [*Descheneaux*].

⁹ *Gehl v Attorney General of Canada*, 2017 ONCA 319.

In August 2015, the Quebec Superior Court handed down its decision in *Descheneaux v. AG Canada*.¹⁰ Canada was directed once more to amend the *Indian Act* because it discriminates against Stéphane Descheneaux and Susan Yantha on the basis of sex. The Court gave Canada until February 3, 2017, to make curative amendments,¹¹ and then granted an extension until July 3, 2017.¹² A further extension until December 15, 2017 was subsequently granted by the Quebec Court of Appeal.

During this same period, Dr. Lynn Gehl was successful in her challenge to the unstated paternity policy of Indigenous and Northern Affairs in *Gehl v. Canada (Attorney General)*,¹³ an administrative policy that required the identity of the father of a child to be declared and the signatures of both parents to be presented, otherwise the Registrar would automatically assume that the father was non-Indian and this would affect the child's eligibility for Indian status.¹⁴

In response to *Descheneaux* and, subsequently, to *Gehl*, the Government of Canada introduced Bill S-3, *An Act to amend the Indian Act (elimination of sex-based inequities in registration)*.¹⁵ Bill S-3, as originally introduced by the Government of Canada in October 2016, was another piecemeal amendment designed (despite the promising name of the Bill) to address only the discrimination identified in *Descheneaux*, but not to grant entitlement to the many Indian women and their descendants still excluded because they were born prior to September 5, 1951, or to address the lesser categories of status accorded to Indian women and their descendants because of the sex-based hierarchy between s. 6(1)(a) and s. 6(1)(c),

Bill S-3 was considered by the Senate Standing Committee on Aboriginal Peoples, and in May 2017 that Committee adopted an amendment, which, if supported by the Government, would have the effect of eliminating the sex discrimination by entitling Indian women and their descendants born prior to April 15, 1981 to full 6(1)(a) status on the same footing with Indian

¹⁰ *Descheneaux v Canada (Procureur Général)*, 2015 QCCS 3555.

¹¹ Poverty and Human Rights Centre, *Petitioner Observations in Response to Canada's Request for Suspension of the Committee's Consideration of the Petition of Sharon Mclvor and Jacob Grismer, Communication No. 2020/2010* (20 June 2016), online: <<http://povertyandhumanrights.org/wp-content/uploads/2016/06/Mcivor-Petitioners-Objection-to-Suspension-Request.pdf>> .

¹² On June 27, 2017, the Quebec Superior Court denied Canada's request to further extend the July 3 timeline. See Michelle Zilio, "Quebec Superior Court blocks extension to fix discrimination in Indian Act" *Globe and Mail* (June 29, 2017), online <<https://www.theglobeandmail.com/news/politics/quebec-superior-court-blocks-extension-to-fix-discrimination-in-indian-act/article35507784/>>.

¹³ *Gehl v Attorney General of Canada*, 2017 ONCA 319.

¹⁴ Native Women's Association of Canada, "Aboriginal Women and Unstated Paternity" (Paper delivered at the National Aboriginal Women's Summit, 20-22 June 2007) at 7, online: <<http://www.lynngehl.com/uploads/5/0/0/4/5004954/nwac-paternity.pdf>>. See also UNHRC, 27th Sess, Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: The Situation of Indigenous Peoples in Canada, UN Doc A/HRC/27/52/Add.2 (2014) at para 55, online: <<http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>>; Indigenous and Northern Affairs Canada, "Unstated Paternity on Birth Certificate: Quick Facts on Documentation Required" (12 April 2012), online: <<https://www.aadnc-aandc.gc.ca/eng/1334234251919/1334234281533>> .

¹⁵ Bill S-3, *An Act to amend the Indian Act (elimination of sex-based inequities in registration)*, online: <<https://openparliament.ca/bills/42-1/S-3/>>.

men and their descendants.¹⁶

Dubbed the '(6(1)(a) all the way amendment' it was agreed to by the full Senate on June 1, 2017. The Senate's amended Bill S-3 was sent to the House of Commons, where the Government's majority of Members of Parliament rejected the Senate's '6(1)(a) all the way' amendment, and returned it to the Senate. The Senate rose for summer recess without reconsidering Bill S-3 in its re-amended form. Because the Court's deadline for action to cure the unconstitutional discrimination identified in *Descheneaux* is now set at December 15, 2017, it is expected that the Senate will be asked to reconsider Bill S-3 during the current fall session of Parliament.

The Senators and virtually all the witnesses who testified before Senate and House of Commons Committees agreed that the Government's Bill S-3 does not remove all the sex discrimination from the *Indian Act*, and that it is time to do so without further delay.¹⁷

The Government of Canada defends Bill S-3 on the grounds that it needs to undertake further consultation. FAFIA and ONWA fully support and expect governments to comply with their duty to consult Indigenous peoples when decisions affecting them are being considered.¹⁸ However, FAFIA and ONWA do not support governments using the duty to consult as an excuse for delaying the implementation of the rights of Indigenous women. The duty to consult is intended to facilitate the fulfillment of human rights, not be an obstacle or delaying tactic.

The Government of Canada has been consulting about whether it should eliminate the sex discrimination from the *Indian Act* since the 1970s.¹⁹ The most recent consultation on this subject was conducted only 7 years ago after the former Prime Minister Stephen Harper's Conservative Government introduced Bill C-3. At that time, many rejected the need for further consultation, and supported removing the discrimination completely. For example, B.C. First Nations rejected the need for any further consultation and one of the signatories of the BC consultation report was then BC representative of the Assembly of First Nations, Jody Wilson-Raybould, now Canada's Attorney General and Minister of Justice.²⁰

FAFIA and ONWA also submit that the Government of Canada has an obligation under constitutional and international law, as well a fiduciary duty not to discriminate on the basis of sex, whether Indigenous First Nations and communities agree or not. Additionally, *the United Nations Declaration on the Rights of Indigenous Peoples* states that all Aboriginal rights and

¹⁶ *Debates of the Senate*, 42nd Parl, 1st Sess, Vol 150, Issue 126 (1 June 2017), online: <https://sencanada.ca/en/content/sen/chamber/421/debates/126db_2017-06-01-e>.

¹⁷ Canada, Parliament, Senate, Standing Committee on Aboriginal Peoples, *Evidence*, 42nd Parl, 41st Sess, No 13 (23 November 2016), online: <<https://sencanada.ca/en/Content/Sen/committee/421/appa/52929-e>>.

¹⁸ United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly 61/295, Article 19.

¹⁹ Research of Mary Eberts, in the possession of FAFIA.

²⁰ 2010 Consensus Agreement – Collective support for amendments to Bill C-3 (*Gender Equity in Indian Registration Act*), Union of B.C. Indian Chiefs, First Nations Summit, B.C. Assembly of First Nations.

Indigenous law must not discriminate based on gender.²¹ Most, if not all, Indigenous First Nations and communities do not wish to see discrimination on the basis of sex continue.²²

The Government of Canada can remove the sex discrimination from the status provisions. Following this removal, it can then legitimately consult about the resources and services needed to ensure that communities can include new members, and about how they wish to deal with their own membership issues. There is no need for further delays in order to consult on *whether* it will eliminate sex discrimination from the status provisions of the *Act*. This is a legal obligation to which Canada must comply without delay.

The women and their descendants who are excluded from Indian status because of sex discrimination have both the individual right to equality and the collective right to be recognized equally as members of their communities, and to participate in promised nation-to-nation talks. If the women and their descendants are not recognized because of continuing sex discrimination, they are robbed of their rights to culture and to participate in decision-making regarding lands and resources. Continuing the sex discrimination means that the pool of Indigenous Peoples with whom the Government of Canada will negotiate a new Nation-to-Nation relationship will be diminished and distorted by sex discrimination.

Both the IACHR report²³ and the CEDAW Committee Report²⁴ on missing and murdered Indigenous women and girls found that sex discrimination in the *Indian Act* was a root cause of the crisis of violence. Both expert bodies recommended that Canada eliminate the discrimination immediately.

FAFIA is deeply disturbed that a new Government, which has made a public commitment to women's equality, and wishes to establish a new Nation-to-Nation relationship with Indigenous peoples, refuses to remove the sex discrimination from the *Indian Act* and continues to exclude thousands of Indigenous women and their descendants from entitlement to Indian status, or consigns them to a second-class category of status.

IV. McIvor Petition

As a result of the deficiencies of the 2010 amendments to the *Indian Act*, (Bill C-3) Sharon

²¹ Pamela Palmater, *Indigenous Nationhood: Empowering Grassroots Citizens* (Black Point, Nova Scotia: Fernwood Publishing, 2015).

²² *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 at art 44, (entered into force: 13 September 2007), online: <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>.

²³ OAS, Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II.Doc.30/14 (2014) at paras 68-69, 93, 129, online: <<http://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>>.

²⁴ UNCEDAW, 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, UN Doc CEDAW/C/OP.8/CAN/1 (2015) at 51, para X(C)(v), online at: <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf>.

Mclvor filed a petition with the UN Human Rights Committee (*Mclvor v. Canada* (Communication No. 2020/2010), claiming that the continuing sex discrimination violates the *International Covenant on Civil and Political Rights*.²⁵

Canada recently requested that the UN Human Rights Committee suspend its consideration of her petition on the grounds that it was intending to amend the *Indian Act* to remove "all known sex discrimination."²⁶ The Committee granted Canada's requests and suspended consideration of the Mclvor petition. A decision is still pending.

V. Conclusion

Canada refuses to act to remove sex discrimination from the *Indian Act*, even though it has been urged to do so repeatedly by United Nations treaty bodies, and even though this discrimination has been identified as a root cause of the human rights crisis of murders and disappearances of Indigenous women and girls. Indigenous women have been fighting to end this sex discrimination for more than fifty years. It is time for Canada to end this discrimination.

VI. Recommendations

The Government of Canada should:

- **Implement the CEDAW and Human Rights Committee recommendations to eliminate sex discrimination from the status provisions of the Indian Act.**
- **Amend the Indian Act immediately to remove all sex discrimination and ensure that s. 6(1)(a) of the status registration regime, introduced by the 1985 Indian Act, and re-enacted by the Gender equity in Indian Registration Act (Bill C-3), is interpreted or amended so as to entitle to registration under s. 6(1)(a) those persons who were previously not entitled to be registered under s. 6(1)(a) solely as a result of the preferential treatment accorded to Indian men over Indian women born prior to April 17, 1985, and to patrilineal descendants over matrilineal descendants, born prior to April 17, 1985.**

²⁵ The Poverty and Human Rights Centre, "Mclvor v Canada" (19 August 2011), online: <<http://povertyandhumanrights.org/2011/08/mcivor-v-canada/>>.

²⁶ Poverty and Human Rights Centre, *Petitioner Observations in Response to Canada's Request for Suspension of the Committee's Consideration of the Petition of Sharon Mclvor and Jacob Grismer, Communication No. 2020/2010* (20 June 2016), at para 3, online: <<http://povertyandhumanrights.org/wp-content/uploads/2016/06/Mcivor-Petitioners-Objection-to-Suspension-Request.pdf>>; Poverty and Human Rights Centre, *Third Supplemental Submission of the Government of Canada on the Admissibility and Merits of the Communication to the Human Rights Committee of Sharon Mclvor and Jacob Grismer Communication No. 2020/2010* (28 February 2017) at para 38, online: <<http://povertyandhumanrights.org/wp-content/uploads/2017/03/Canadas-Third-Supplemental-Submission28022017.docx>>.

Murders and Disappearances of Indigenous Women and Girls

I. Human Rights Council and Treaty Body Concerns and Previous Recommendations

In its Second UPR, Canada received numerous recommendations to combat and take effective action to end all forms of violence against Indigenous women and girls, including the crisis of disappearances and murders of Indigenous women and girls.²⁷ We welcomed the many recommendations on this issue in 2013, and call on the Human Rights Council to reiterate these recommendations to Canada due to its failure to effectively act on them, specifically:

- Canada accepted Recommendation 93 to develop strategies to address the root causes and consequences of violence against Aboriginal women and girls and yet there are no public indications that it has acted on this recommendation;²⁸
- Canada did not accept Recommendations 58, 96, 97, 98, 99, and 104, calling on Canada to devise a national plan of action, or strategy, to end the violence against Indigenous women and girls.²⁹

FAFIA and ONWA submit that Canada must develop strategies to address the root causes and consequences of the violence and that these strategies should align with a national plan of action to end violence against Indigenous women and girls and remedy the systemic discrimination against them, including policing failures to adequately respond to the violence. While Canada has launched a National Inquiry, it has not made any public commitment to devising a national action plan that will be implemented as an outcome of the Inquiry.

FAFIA and ONWA request that recommendations are made to Canada that reiterate the Council's 2013 recommendations, principally, recommendations 58, 88, 93, 96-99, 104 and impress upon Canada that it is of paramount importance that a national action plan combatting the violence is an outcome of the National Inquiry.

II. CEDAW and Inter-American Commission on Human Rights (IACHR) Reports

In 2011, FAFIA and the Native Women's Association of Canada (NWAC) asked the Committee on the Elimination of Discrimination against Women (CEDAW) to initiate an inquiry³⁰ under Article

²⁷ Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada, UN Doc A/HRC/24/11 (2013) at para 128.85-128.90; 128.93, 128.95 [2013 UPR Working Group Report].

²⁸ 2013 UPR Working Group Report at para 128.93; Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada Addendum, UN Doc A/HRC/24/11/Add.1 (2013) at para 37 [2013 Canada's Reply].

²⁹ 2013 UPR Working Group Report at paras 128.58, 128.96-128.99, 128.104; 2013 Canada's Reply at para 39.

³⁰ *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, GA RES 54/4, UNGAOR, 54th Sess, UN Doc A/RES/54/4 (1999) online: <https://treaties.un.org/doc/source/docs/A_RES_54_4-Eng.pdf> (entered into

8 of the Optional Protocol³¹ to the *Convention on the Elimination of Discrimination against Women*, into the crisis of murders and disappearances of Indigenous women and girls. In 2013 FAFIA and NWAC also requested the Inter-American Commission to investigate murders and disappearances of Indigenous women in British Columbia, Canada.

In 2015, the CEDAW Committee issued the report of its Article 8 investigation on missing and murdered Indigenous women and girls in Canada.³² The CEDAW Committee found Canada in violation of the *Convention* and made 38 recommendations. 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.³³

FAFIA is concerned that 37 of the CEDAW Committee's 38 recommendations have not been implemented, and 9 of the 10 IACHR recommendations have not been implemented. The one recommendation from both expert bodies that has been implemented is the recommendation that Canada launch an independent national inquiry into the murders and disappearances of Indigenous women and girls.

However, there are serious concerns now about Canada's failure to move forward on implementation of the CEDAW and IACHR recommendations, as well as about the capacity and credibility of the National Inquiry to discharge its crucial work.

While both the CEDAW Committee and the Inter-American Commission recommended that Canada launch a National Inquiry to further public examination and increase public understanding of the human rights crisis of murders and disappearances, and its causes and consequences, the establishment of the National Inquiry does not permit governments to delay taking steps that have been recommended by both international and regional expert bodies, and by Indigenous women's organizations and human rights experts for many years.

force 22 December 2000, accession by Canada 18 October 2002).

³¹"Campaign of Solidarity with Aboriginal Women Article 8 Inquiry", Canadian Feminist Alliance for International Action (Blog), (2015), online: <<http://www.fafia-afai.org/en/solidarity-campaign/#the-cedaw-inquiry>>.

³² 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://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf> (see paras 13-20 for background on the Inquiry procedure).

³³OAS, Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia*, OEA/Ser.L/V/II (2014), online: <<http://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>>.

III. The National Inquiry: Implementation of CEDAW and IACHR recommendations

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 2018.³⁴ Launching the National Inquiry was an important step forward in recognizing the deeply rooted and deadly discrimination that Indigenous women and girls face in Canada.

a. Inadequate Terms of Reference

However, as one of the organizations that has advocated for many years for the establishment of this inquiry, FAFIA has serious concerns about the Inquiry's mandate and terms of reference,³⁵ because 1) there is no requirement to use a human rights framework; 2) there is no explicit reference to policing and the criminal justice system; and 3) there is no mechanism for the independent review of cases where family members believe that investigations were partial, incomplete, or never made. Further information regarding the terms of reference is provided in Appendix A.

b. Current state of collapse

In addition to obvious weaknesses in its mandate, the Inquiry appears to be in a state of collapse.³⁶ The Inquiry has been officially at work since September 2016, and it is due to provide its interim report in November 2017. However, to date, the Inquiry has held only two family

³⁴ Department of Finance Canada, *Federal Budget, 2016*, (Ottawa: Department of Finance, 2016), online: <<http://www.budget.gc.ca/2016/docs/plan/toc-tdm-en.html>>.

³⁵ Native Women's Association of Canada, 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>>.

³⁶ Fred Chartland, "Inquiry into Missing, Murdered Indigenous Women in 'Serious Trouble': Advocates", *National Post* (15 May 2017), online: <<http://news.nationalpost.com/news/canada/inquiry-into-missing-murdered-indigenous-women-in-serious-trouble-advocates>>; "Inquiry into Missing and Murdered Indigenous Women Postpones Edmonton, Thunder Bay Meetings", *CBC News* (14 April 2017), online: <<http://www.cbc.ca/news/canada/edmonton/mmwig-advisory-meetings-postponed-1.4071117>>; Gloria Galloway, "Inquiry into missing and murdered women a failure: Indigenous group", *The Globe and Mail* (16 May 2017), online: <<https://www.theglobeandmail.com/news/politics/inquiry-into-missing-and-murdered-women-a-failure-indigenous-group-says/article35003027/>>; Open Letter from Christi Belcourt to Chief Commissioner Marion Buller National Inquiry on Missing and Murdered Indigenous Women and Girls (15 May 2017), online: <<http://christibelcourt.com/open-letter-to-chief-commissioner-marion-buller-national-inquiry-on-missing-and-murdered-indigenous-women-and-girls/>>; Letter from Marion Buller, Chief Commissioner to Families of Missing and Murdered Women and girls, Survives of Violence, Ms. Christi Belcourt and Signatories of the Open Letter (19 May 2017), online: <<http://www.mmwig-ffada.ca/files/ni-response-to-open-letter-en.pdf>>.

hearings and one expert hearing. Eight senior staff members have resigned.³⁷ The Chief Commissioner has made numerous explanations for the delays and confusion.³⁸

Non-governmental organizations with expertise to offer the inquiry were invited to apply for standing; many did and have been granted standing, including FAFIA and ONWA. However, the policy inquiry into the systemic causes of the violence, and the systemic failures in policing, the justice system, and social programming that perpetuate and sustain it, is disorganized. To date, methods and opportunities for participation for parties with standing are not clear; the Inquiry's plan and schedule for hearings is vague; funding is restricted and not accessible for many organizations. FAFIA and ONWA welcomed the launch of the National Inquiry. However, at this point, there are grave concerns about whether the National Inquiry, as currently composed, is capable of discharging the task it was assigned.³⁹ ONWA has withdrawn from any participation in the Inquiry until such time as current issues are resolved.

IV. Status Update on Implementation of CEDAW Report recommendations

FAFIA has assessed the implementation of the central CEDAW recommendations on murders and disappearances of Indigenous women and girls.

a. 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 across police agencies in all Canadian jurisdictions, 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.

i. No consistent and reliable data collection

³⁷ "Missing and murdered inquiry commissioner tries to quell concerns over staff resignations" *CBC News* (4 July 2017), online: <<http://www.cbc.ca/news/canada/montreal/mmiwg-inquiry-resignation-1.4189791>>; "Missing and Murdered Inquiry Commissioner Tries to Quell Concerns Over Staff Resignations", *CBC News* (4 July 2017), online: <<http://www.cbc.ca/news/indigenous/mmiwg-resignation-michele-moreau-1.4187118>>.

³⁸ Letter from Marion Buller, Chief Commissioner to Families of Missing and Murdered Women and girls, Survives of Violence, Ms. Christi Belcourt and Signatories of the Open Letter (19 May 2017), online: <<http://www.mmiwg-ffada.ca/files/ni-response-to-open-letter-en.pdf>>; Philippe Morin, "'We're going to need more time' MMIWG promises more Yukon hearings" *CBC News* (31 May 2017), online: <<http://www.cbc.ca/news/canada/north/national-mmiwg-inquiry-whitehorse-hearings-time-1.4139647>>.

³⁹ Fred Chartland, "Inquiry into Missing and Murdered Indigenous Women in Serious Trouble", *The National Post* (17 May 2017), online: <<http://nationalpost.com/news/canada/inquiry-into-missing-murdered-indigenous-women-in-serious-trouble-advocates/wcm/8c7de7fe-7c60-4ab3-a2ca-81347eab62bc>>

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 sources (with different purposes, collection methodologies, and definitions).⁴⁰ 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,⁴¹ there are significant problems with this RCMP data.⁴²

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.⁴³

ii. No standardized, co-ordinated protocols for all police forces to follow when Indigenous women and girls are reported missing

The CEDAW Committee called upon Canada to ensure that all police agencies follow standardized, mandatory protocols when responding to cases of missing and murdered Indigenous women.⁴⁴ 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.⁴⁵

⁴⁰ Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: 2015 Update to the National Operational Overview* (Ottawa: RCMP, 2015) at 3, online: <<http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-2015-update-national-operational-overview>>.

⁴¹ Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: An Operational Overview* (Ottawa: RCMP, 2014), online: <http://ywcacanada.ca/data/research_docs/00000310.pdf>; ; Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: 2015 Update to the National Operational Overview* (Ottawa: RCMP, 2015) at 3, online: <<http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-2015-update-national-operational-overview>>; *Ibid.*

⁴² 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>>.

⁴³ The Government of Canada recently announced a new federal strategy to address gender-based violence, which provides some funding for a knowledge centre within Status of Women Canada which will undertake “data collection and research in priority areas.” However, the Government of Canada does not hold out this knowledge centre and its funding as a solution to the need for standardized and mandatory data collection on murders and disappearances of Indigenous women and girls. See: Canada's Strategy to Prevent and Address Gender-Based Violence, online: <http://www.swc-cfc.gc.ca/violence/strategy-strategie/GBV_Fact_sheets_5.pdf>

⁴⁴ UNCEDAW, *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*, UNOHCHR, 2015, UN Doc CEDAW/C/OP.8/CAN/1 at 54, online: <<http://undocs.org/CEDAW/C/OP.8/CAN/1>>.

⁴⁵ Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: 2015 Update to the National Operational Overview* (Ottawa: RCMP, 2015) at 17, online: <<http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-2015-update-national-operational-overview>>.

The RCMP, which is one police force among hundreds in Canada, has published a National Missing Persons Strategy.⁴⁶ However, the Action Plan promised by this Strategy has not been developed, or made public.⁴⁷

iii. No consistent standard of conduct that is transparent and enforceable for police when engaged with Indigenous women and girls

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.

b. CEDAW Recommendation: Take comprehensive measures to significantly improve the socioeconomic conditions of the Indigenous community, including the 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 under a separate heading in this report.

i. 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. 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's participation.

ii. 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.⁴⁸ This budget allocation does not address poverty, food security, housing, or education and employment strategies specifically focused on Indigenous women.

⁴⁶ RCMP, "National Missing Persons Strategy" (2016), online: <<http://www.rcmp-grc.gc.ca/en/rcmp-national-missing-persons-strategy>>. Suggested URL: <<http://www.rcmp-grc.gc.ca/en/missing-persons>>.

⁴⁷ 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.

⁴⁸ Kristy Kirkup, "Liberal Budget Includes Billions in New Spending for Aboriginal People" *CBC News* (22 March 2016), online: <<http://www.cbc.ca/news/indigenous/liberal-budget-billions-new-spending-aboriginal-peoples-1.3502942>>.

In March 2017, an additional \$3.4 billion dollars for areas of “critical need” was added to the original five year pledge.⁴⁹ This new money allocated in 2017 includes \$828.2 million for First Nations and Inuit health, including \$118.2 million to support mental health programs and \$15 million to combat drug dependency.⁵⁰ In addition, \$1.1 billion has been allocated for “improving Indigenous communities”.⁵¹ However, it is not clear how the funds will be allocated and whether they will directly improve Indigenous women’s socioeconomic conditions.

- c. 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.

iii. Police brutality against Indigenous women and girls

Canada has not addressed police practices in relation to racist, sexist and neglectful police investigations into violence against Indigenous women and girls, nor has it addressed police conduct in terms of racism, abuse and sexualized violence demonstrated by members of various police forces towards Indigenous women and girls, i.e. as perpetrators themselves.⁵² Intimidation, threats, physical abuse, sexual assaults and the sexual exploitation of Indigenous women and girls (including child pornography) by police forces in Canada have been documented by Human Rights Watch⁵³ and various media outlets in Canada.

In 2013, Human Rights Watch found that women in northern British Columbia were harassed, threatened, raped and beaten by police.⁵⁴ Human Rights Watch reported eight incidents in which police physically assaulted or used questionable force against girls under the age of 18.⁵⁵ Four years after the Human Rights Watch report, the Chairperson of the Civilian Review and Complaints Commission for the RCMP issued a report, that broadly confirms the findings of the 2013 Human Rights Watch Report.⁵⁶

⁴⁹ Margo McDiarmid, “Budget Targets \$3.4B for ‘Critical’ Needs of Indigenous Communities” *CBC News* (22 March 2017), online: <<http://www.cbc.ca/news/politics/liberal-budget-indigenous-2017-1.4035409>>.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Pamela Palmater, “Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry” (2016) 28:2 *CJWL* 253.

⁵³ Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013) at 32, online: <https://www.hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf>.

⁵⁴ 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>>.

⁵⁵ *Ibid.*

⁵⁶ Civilian Review and Complaints Commission for the RCMP, “Chairperson's Final Report...on Public Interest Investigation on Policing in Northern British Columbia” (16 February 2017), online: <<https://www.crc-cetp.gc.ca/en/chairs-final-report-after-commissioners-chair-initiated-complaint-and-public-interest-investigation>>.

In June 2017, Human Rights Watch issued a new report on police relations with Indigenous women in Saskatchewan.⁵⁷ This report documents a relationship fractured by the active involvement of the RCMP in the enforcement of residential school rules and worsened by current violent policing practices including, excessive use of force, degrading and abusive body and strip searches by male officers and failure to protect Indigenous women from violence. These reports reveal a pattern of violence where Indigenous women are targeted specifically because they are Indigenous and because there is a history of the violence perpetrated against them being neglected and disregarded by the authorities.⁵⁸

Women in Val D'Or Quebec have come forward to publicly complain about physical and sexual abuse by police.⁵⁹ 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.⁶⁰ The extent of police brutality towards Indigenous women and girls is shocking and it continues unabated.⁶¹ This conduct is current the subject of a public inquiry in Quebec.⁶²

High levels of sexism⁶³, racism,⁶⁴ and police corruption⁶⁵ generally, and towards Indigenous women and girls specifically, further compound the problem, as most complaint processes are through the same offending police forces.

⁵⁷ Human Rights Watch, Canada: "Police Fail Indigenous Women in Saskatchewan" (19 June 2017), online: <<https://www.hrw.org/news/2017/06/19/canada-police-fail-indigenous-women-saskatchewan>>.

⁵⁸ *Ibid.*

⁵⁹ "Aboriginal women's claims of police sexual abuse under investigation", *CBC News* (22 October 2015), online: <<http://www.cbc.ca/news/canada/montreal/aboriginal-women-s-claims-of-police-sex-abuse-under-investigation-1.3282845>>.

⁶⁰ Holly Moore, "Mountie takes woman home to 'pursue a personal relationship'", *CBC News* (8 January 2015), online: <<http://www.cbc.ca/news/canada/manitoba/mountie-takes-woman-home-from-jail-to-pursue-a-personal-relationship-1.2893487>>; "Former Manitoba Mountie charged with sexual exploitation", *CBC News* (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 News* (9 September 2016), online: <<http://www.cbc.ca/news/canada/british-columbia/surrey-rcmp-creep-catchers-1.3755848>>.

⁶¹ Pamela Palmater, "Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry" (2016), 28:2 CJWL 253.

⁶² Commission d'enquête sur les relations entre les Autochtones et certains services publics, "Convening to the Commission d'enquête sur les relations entre les Autochtones et certains services publics du Québec : écoute, réconciliation et progrès's launching press conference" (13 March 2017) online <https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Press_release_CERP_2017-03-13.pdf>

⁶³ Natalie Clancy, "More Women Alleging Harassment Want to Join Lawsuit Against RCMP", *CBC News* (4 June 2015), online: <<http://www.cbc.ca/news/canada/british-columbia/more-women-alleging-harassment-want-to-join-lawsuit-against-rcmp-1.3089534>>; John Tasker, "RCMP's Recent History of Harassment, Abuse and Discrimination", *CBC News* (18 February 2016), online: <<http://www.cbc.ca/news/politics/rcmp-sexual-harassment-history-1.3453413>>.

⁶⁴ Nova Scotia, Royal Commission on the Donald Marshall, Jr, Prosecution, *Digest of Findings and Recommendations* (Nova Scotia: December 1989) at 1, online: <https://www.novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20R%20Prosecution_findings.pdf>; Royal Commission on Aboriginal Peoples, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, Vol 4 (Ottawa: Canada Communication Group, 1996) at 434, online: <<http://data2.archives.ca/e/e448/e011188230-04.pdf>>; Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba* (Manitoba: November 1999) at Chapter 1, online: <<http://www.ajic.mb.ca/volumell/chapter1.html>>.

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

iv. 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.⁶⁶ Complaints against the police are notoriously unsuccessful.⁶⁷ High levels of sexism⁶⁸, racism,⁶⁹ and police corruption⁷⁰ generally, and towards Indigenous women and girls specifically, further compound the problem, as most complaint processes are through the same offending police forces.

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.

⁶⁵ Jim Bronskill, "RCMP study finds hundreds of cases of corruption on Mounties", *Toronto Star* (18 May 2014), online: <https://www.thestar.com/news/canada/2014/05/18/rcmp_study_finds_hundreds_of_cases_of_corruption_in_mounties.html>.

⁶⁶ See: Civilian Review of Complaints Commission for the RCMP (15 May 2017), online: <<https://www.crcc-ccetp.gc.ca>>.

⁶⁷ 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>>.

⁶⁸ Natalie Clancy, "More Women Alleging Harassment Want to Join Lawsuit Against RCMP", *CBC News* (4 June 2015), online: <<http://www.cbc.ca/news/canada/british-columbia/more-women-alleging-harassment-want-to-join-lawsuit-against-rcmp-1.3089534>>; John Tasker, "RCMP's recent history of harassment, abuse and discrimination", *CBC News* (18 February 2016), online: <<http://www.cbc.ca/news/politics/rcmp-sexual-harassment-history-1.3453413>>.

⁶⁹ Nova Scotia, Royal Commission on the Donald Marshall, Jr, Prosecution, *Digest of Findings and Recommendations* (Nova Scotia: December 1989) at 1, online: <https://www.novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf>; Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, Vol 4 (Ottawa: Canada Communication Group, 1996) at 434, online: <<http://data2.archives.ca/e/e448/e011188230-04.pdf>>; Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba* (Manitoba: November 1999) at Chapter 1, online: <<http://www.ajic.mb.ca/volumell/chapter1.html>>.

⁷⁰ Jim Bronskill, "RCMP Study Finds Hundreds of Cases of Corruption on Mounties", *Toronto Star* (18 May 2014), online: <https://www.thestar.com/news/canada/2014/05/18/rcmp_study_finds_hundreds_of_cases_of_corruption_in_mounties.html>.

V. Recent UN Treaty Body Comments on Murders and Disappearances

In 2013, Canada accepted Recommendation 88 to “ensure effective implementation of CEDAW at the federal, provincial and territorial levels with particular attention to Aboriginal women and girls.”⁷¹ FAFIA and ONWA submits that Canada has failed to effectively implement CEDAW across Canadian jurisdictions, and in particular, has failed to act on the CEDAW Committee’s recommendations to Canada on the issue of missing and murdered Indigenous women and girls.

Canada was reviewed by the Human Rights Committee in July 2015, by the Committee on Economic, Social and Cultural Rights in February 2016, by the CEDAW Committee in 2016, and by the CERD Committee in 2017. FAFIA and NWAC made a joint submission to the Human Rights Committee⁷² 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.⁷³ FAFIA and NWAC made a joint submission to the CEDAW Committee.⁷⁴ FAFIA and ONWA made a joint submission to the CERD Committee with the Canadian Association of Elizabeth Fry Societies and Dr. Pamela Palmater, the Chair in Indigenous Governance at Ryerson University.⁷⁵

The treaty bodies made detailed recommendations to Canada as follows:

- the Human Rights Committee called on Canada to investigate, prosecute and punish the perpetrators and provide reparation to victims; and address the root causes of violence against [Indigenous] women and girls.⁷⁶ The Human Rights also Committee asked Canada to provide information on the implementation of the above recommendation within one year—by August 2016.⁷⁷

⁷¹ 2013 UPR Working Group Report at Rec 128.88; 2013 Canada’s Reply at para 37

⁷² 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>.

⁷³ 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>.

⁷⁴ Canadian Feminist Alliance for International Action & 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, online: <fafia-afai.org/wp-content/uploads/2016/10/Native-Womens-Association-of-Canada-and-FAFIA.pdf>

⁷⁵ FAFIA, Canadian Association of Elizabeth Fry Societies, Dr. Pamela Palmater, Chair in Indigenous Governance Ryerson University, *Discrimination against Indigenous and Racialized Women in Canada*, July 2017, online: <http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_28045_E.pdf>.

⁷⁶ 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%2FC%2FCAN%2FCO%2F6>.

⁷⁷ *Ibid* at para 21.

- the Committee on Economic, Social and Cultural Rights noted its concern that the persistence of violence against Indigenous women and girls is exacerbated by the economic insecurity,⁷⁸ and recommended that Canada address the link between poverty, race, and vulnerability to violence and take effective measures to prevent the violence.⁷⁹
- In October 2016, Canada was reviewed by the CEDAW Committee, and the Committee recommended that Canada fully implement, without delay, all the recommendations issued by the Committee in its report on its inquiry.⁸⁰

Canada has no plan for implementing the remaining CEDAW recommendations, and no mechanism is in place for monitoring implementation of them. To date, the National Inquiry has not acknowledged the CEDAW recommendations, or the CEDAW and IACHR reports, and their relevance to its work.

VI. IACHR Follow-Up Hearings on Murders and Disappearances

On 7 April and 9 December 2016, the IACHR held follow-up hearings 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 these hearings along with Government of Canada representatives and, in April 2016, the UN Special Rapporteur on violence against women. At these hearings, the Government of Canada stated that actions are being taken that are giving effect to the recommendations of the CEDAW Committee and the IACHR.⁸¹ FAFIA and the Native Women's Association of Canada testified that there are no mechanisms in Canada for monitoring and evaluating government actions to implement these recommendations, and there is no discernible or measurable progress.⁸²

⁷⁸ 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>>.

⁷⁹ *Ibid* at para 34.

⁸⁰ UNCEDAW, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Canada*, UN Doc CEDAW/C/CAN/CO/8-9 (2016) at para 27 (a)-(d).

⁸¹ Inter-American Commission on Human Rights, "Canadá: Mujeres indígenas British Columbia" (7 April 2016), online: YouTube <<https://www.youtube.com/watch?v=mOPyAG3kXd4>>; Inter-American Commission on Human Rights, "Canadá: Asesinato mujeres indígenas" (9 December 2016), online: YouTube <<https://www.youtube.com/watch?v=TkjSa7JYA30>>.

⁸² Canadian Feminist Alliance for International Action & 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 13, online: <fafia-afai.org/wp-content/uploads/2016/10/Native-Womens-Association-of-Canada-and-FAFIA.pdf>.

VII. Conclusion

The launch of the National Inquiry into missing and murdered Indigenous women was a welcome step. But almost a year later, the National Inquiry does not appear to be capable of doing what Indigenous women and human rights organizations in Canada expected. The Government has taken no steps to intervene, re-organize, or re-set the Inquiry.

At the same time, Canada has no plan in place for implementing the outstanding CEDAW and IACHR recommendations. Many of these recommendations can be acted on immediately, and this work should be occurring alongside, and perhaps, as the CEDAW Committee has recommended, in collaboration with, the Inquiry.⁸³

Further, there is no coordination mechanism, and no mechanism for centralizing information, to oversee any initiatives being implemented by different public agencies across levels of government.⁸⁴ Consequently, there is no mechanism to hold governments to account for implementation of the CEDAW and IACHR recommendations.

The outcome of the National Inquiry should be a National Action Plan that reflects and incorporates all of the CEDAW and IACHR recommendations, and other steps that the National Inquiry identifies as needed. However, there is no sign that the Inquiry has such a goal, or any prospect of achieving it.

VIII. 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 CEDAW, other UN bodies, and the IACHR 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, and ensure specific supports for victims of domestic violence.**
- **Amend the terms of the National inquiry and/or a special inquiry be conducted to investigate police violence against Indigenous women and girls, noting all filed complaints, investigations, charges, and prosecutions and a special investigation should be made of the vulnerabilities associated with Indigenous children in care, runaways, and homeless Indigenous women and children to police racism and**

⁸³ OAS, Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia*, OEA/Ser.L/V/II (2014), online: <<http://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>>

⁸⁴ UNCEDAW, *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*, UNOHCHR, 2015, UN Doc CEDAW/C/OP.8/CAN/1 at para 188, online: <<http://undocs.org/CEDAW/C/OP.8/CAN/1>>.

sexualized violence.

- Together with provinces and territories provide unfettered access to federal, provincial, territorial, municipal records, statistics, and other data necessary to the extent of police racism, abuse, and sexualized violence against Indigenous women and girls and its connection to their failure to initiate and investigate complaints related to the murdered and missing.
- 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.
- Undertake, through the national inquiry, or otherwise, 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.
- Make a complete review of all oversight mechanisms and entities (police-based or independent) for systemic problems related to the proper and complete investigations of police abuse of Indigenous women and girls, including failures to initiate and investigate complaints and why some complaints never brought forward.
- Undertake a review of Canada's domestic and international human rights obligations in regard to the protection of Indigenous women and girls from racist and sexualized violence committed by state actors, such as law enforcement, lawyers, health care professionals, child welfare workers, and judges and due consideration must be given to the impact that police racism and violence has on the victims, their families, communities, and Nations and how to properly compensate them.
- Implement a specific review of assaults, sexual assaults, and other misconduct by police against Indigenous women and girls at every stage of police custody—initially stopped/called, arrests or detentions, inside police vehicles, and in jail cells—as well as any complaints not acted upon or where evidence was not collected or could not be collected due to delay.
- 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 and IACHR recommendations, and other related recommendations on missing and murdered Indigenous women and girls.
- Support women's human rights organizations that can assist and offer expertise to the National Inquiry.

Appendix A: Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women and Girls

The Inquiry Terms of Reference (ToR)⁸⁵ fall short in the following ways:

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.

FAFIA, NWAC, and the Canadian Journal of Women and the Law held a Symposium in January 2016, which included international experts from the UN, CEDAW Committee, and IACHR, and the Symposium recommended that the Inquiry be grounded in a human rights framework.⁸⁶ The Canadian Human Rights Commission (CHRC) made the same recommendation.⁸⁷ But the terms of reference do not mandate this.

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.

⁸⁵ Indigenous and Northern Affairs Canada, *Terms of Reference for National Inquiry into Missing and Murdered Indigenous Women and Girls* (Indigenous and Northern Affairs Canada, 2016), online: <<https://www.aadnc-aandc.gc.ca/eng/1470422455025/1470422554686>>.

⁸⁶ 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/MMIWinquryrecommendationFINAL_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>>.

⁸⁷ 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>>.

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 included. The National Inquiry Commissioners have repeated the assurance that policing is a government service covered under their mandate.⁸⁸ FAFIA remains concerned that inquiry into policing and prosecution matters is weakened because the ToR are not explicit,⁸⁹ and to date in the Inquiry's work, this is not a major focus of concern or attention, and plans continue to be vague.

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, at least initially, the Commissioners design and oversee.⁹⁰ Alternatively, the federal, provincial and territorial governments should be collaborating on a mechanism outside the Inquiry that will provide an independent review.

⁸⁸ Connie Walker, “MMIW National Inquiry to Focus on Violence Prevention Not Police Investigations” *CBC News* (20 July 2016), online: <<http://www.cbc.ca/news/canada/mmiw-inquiry-violence-prevention-1.3686671>>.

⁸⁸ Angela Sterritt, “Terms of Reference of MMIW Inquiry “Lack Teeth” Says BC First Nations Chief”, *CBC News* (21 July 2016), online: <<http://www.cbc.ca/news/canada/british-columbia/terms-of-reference-mmiw-inquiry-lack-teeth-1.3689319>>.

⁸⁹ 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>>.

⁹⁰ *Ibid.*