Discrimination against Indigenous and Racialized Women in Canada

Report to the Committee on the Elimination of Racial Discrimination on the Occasion of the Committee's twenty-first to twenty-third Periodic Review of Canada

Submitted July 2017 by the Feminist Alliance for International Action (FAFIA), Chair in Indigenous Governance, the Canadian Association of Elizabeth Fry Societies (CAEFS), 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, including the *Convention on the Elimination of all Forms of Racial Discrimination.*

As a broad alliance of women's organizations, FAFIA is committed to advancing the human rights of all women, and to combating racism and racist practices in Canada. The conditions and experiences of women who experience racism and racial discrimination are too often overlooked, both in account of the situation of women and in account of the situation of racialized minorities.

FAFIA has worked intensively in recent years on issues specifically related to the human rights of Indigenous women and girls in Canada.

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Inequitable access to essential services for First Nations children (Articles 1(4), 2, and 5)

I. Convention on the Elimination of all Forms of Racial Discrimination (CERD) Committee's Concerns and Previous Recommendations

In its last concluding observations regarding Canada, the CERD Committee recommended that Canada, in consultation with Aboriginal peoples, implement and reinforce its existing programmes and policies to better realize the economic, social and cultural rights of Aboriginal peoples. [1] In particular, it recommended that Canada endeavour to facilitate their access to health services and discontinuing the removal of Aboriginal children from their families and providing family and child care services on reserves with sufficient funding […][2]

II. Concerns Raised in General Recommendation No 23: Rights of Indigenous Peoples (1997)

The Committee's 2012 concluding observations regarding equiatable access to heath services and family and child welfare services for Aboriginal peoples are consistent with General Recommendation No 23, which emphasizes the importance of actively combating discrimination against Indigenous peoples. In particular, General Recommendation No 23 calls on States parties to "ensure that members of [Indigenous] peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on [Indigenous] origin or identity".[3]

III. The Lack of Culturally Appropriate Child Welfare Prevention Services

Indigenous children are dramatically overrepresented in the child welfare system in Canada, with a significantly disproportionate number of Indigenous children being taken from their homes and placed in non-Indigenous homes. Recent studies indicate that 48% of the 30,000

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[1] UNCERD, 80th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at paras 19(d), (f).
[2] UNCERD, 80th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at paras 19(d), (f).
[3] UNCERD, 51st Sess, General Recommendation 23: Rights of Indigenous Peoples, UN Doc A/52/18, Annex V (1997) at paras 1, 4(b), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.6 (2003).

children and youth in the foster care system across Canada are Indigenous, notwithstanding that Indigenous peoples account for only 4.3% of the Canadian population.[4] In fact, there are more Indigenous children in foster care today than at the height of the residential school era.[5]

The effects of residential schools and the Sixties Scoop have adversely affected parenting skills and the success of many Indigenous families. As recently noted by the Truth and Reconciliation Commission (TRC): "These factors, combined with prejudicial attitudes towards Aboriginal parenting skills and a tendency to see Aboriginal poverty as a symptom of neglect, rather than as a consequence of failed government policies, have resulted in grossly disproportionate rates of child apprehension among Aboriginal people".[6]

The primary justifications given by child welfare authorities for the apprehension of Indigenous children are 'physical neglect' and the 'failure to supervise', which are highly correlated with poverty, poor housing, and caregiver substance misuse.[7] The result is that Indigenous children are being forcibly removed from their families because their families are poor.

The removal of Indigenous children also has devastating effects on their mothers. The apprehension of children is often part of a vicious circle of harmful events experienced by poor Indigenous women. This circle includes inadequate income assistance, male violence, loss of housing, lack of access to timely and appropriate legal aid, removal of children, and depression/addiction.[8] Once an Indigenous woman is caught in this circle, one harmful event is likely to lead to another.

IV. The Intersection of Violence Against Indigenous Women and Girls and the Child Welfare System

Indigenous women and girls are significantly overrepresented as victims of crime. Additionally, they are more likely than other women to experience risk factors for violence and are

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[4] Statistics Canada, *Selected Demographic, Income and Sociocultural Characteristics, Income Statistics in 2010 and Income Sources for the Population Aged 15 Years and Over in Private Households of Canada, Provinces, Territories, Census Metropolitan Area and Census Agglomerations, 2011 National Household Survey* (Ottawa: Statistics Canada, 2011), cited in Canada's Premiers, *Aboriginal Children in Care*: *Report to Canada's Premiers*, by the Aboriginal Children in Care Working Group (Ottawa: Council of the Federation, 2015) at 7.

[5] Lauren Pelley, "Indigenous Children Removed from Homes in the 1960s Begin to Heal", *The Toronto Star* (2 November 2015), online: <https://www.thestar.com/news/canada/2015/11/02/indigenous-children-removed-from-homes-in-the-1960s-just-now-beginning-to-heal.html> .

[6] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*, Final Report of the Truth and Reconciliation Commission of Canada, vol 1 (Toronto: James Lorimer & Company, 2015) at 138.

[7] Nico Trocmé, Della Knoke & Cindy Blackstock, "Pathways to Overrepresentation of Aboriginal Children in Canada's Child Welfare System" (2004) 78:4 Social Science Rev 578.

[8] Gwen Brodsky et al, "Advancing the Rights of Poor Women: The Vicious Circle" (2010) Poverty and Human Rights Centre at 4, online: <http://povertyandhumanrights.org/wp-content/uploads/2012/11/The-Vicious-Circle-Report.pdf> .

disproportionately young, poor, unemployed, and have likely been involved with the child welfare system[9] which often fails to adequately care for Indigenous girls.

On August 17, 2014, the body of 15 year old Tina Fontaine was found in the Red River in Winnipeg, Manitoba. Her death put a spotlight not only on the need for an inquiry into missing and murdered Indigenous women and girls, but also on the failure of the child welfare system to protect Indigenous girls being cared for outside of their homes. Tina was being cared for by Manitoba's Child and Family Services and had been placed in a foster home before going missing.[10] Police reports indicate that she had a history of running away from her foster home and media reports suggest that the child welfare agency in charge of her care did not know of her whereabouts for periods prior to her murder.

Tina's story underscores the reality for many Indigenous girls in care: they are taken from their families as a result of poverty and the intergenerational impacts of the residential school era and the Sixties Scoop. They are often placed in non-Indigenous homes, where foster parents and child welfare agencies have an inability to provide them with culturally appropriate services or an appropriate cultural context. The girls are alienated from their culture, identity, and community. Inevitably, these girls flee (indefinitely or for periods of time) and become involved behaviours and activities that make them vulnerable to exploitation, including drug use, sex work/prostitution, and trafficking:

> Many [Indigenous] first point of entry into the criminal justice system is a charge for an offence committed within a care facility. Girls may be charged with assault on a staff member or other 'violent' offence and are then remanded to detention centres, where they come into contact with sexually exploited youth and recruiters… Given the high rate of apprehension of [Indigenous] children, their over representation in the child welfare system leads to their over representation in the criminal justice system, which in turn facilitates their entry into prostitution.[11]

Indigenous kin placements are often not an option. In some provinces kin do not receive the same level of financial support as foster parents, making it difficult for already marginalized communities to support their children.[12] Moreover, many Indigenous peoples do not want to

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[9] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*, Final Report of the Truth and Reconciliation Commission of Canada, vol 1 (Toronto: James Lorimer & Company, 2015) at 180.
[10] CBC News Manitoba, "Tina Fontaine, 15, Found in Bag in Red River", *CBC News* (17 August 2014), online: <http://www.cbc.ca/news/canada/manitoba/tina-fontaine-15-found-in-bag-in-red-river-1.2739141> .
[11] Anette Sikka, *Trafficking of Aboriginal Women and Girls in Canada*, Aboriginal Policy Research Series (Ottawa: Institute on Governance, 2009) at 9.
[12] Gretchen Perry, Martin Daly & Jennifer Kotler, "Placement Stability in Kinship and Non-Kin Foster Care: A Canadian Study" (2012) 34 Child and Youth Services Rev 460 at 460.

engage with the child welfare system as foster parents, given their typically negative experiences with residential school and the Sixties Scoop.[13]

More research is needed to explore and understand the intersection of violence against Indigenous women and girls but existing research suggests a devastating link between the large numbers of missing and murdered Indigenous women and girls and the many harmful background factors in their lives, including their overrepresentation in the child welfare system.[14]

V. Ongoing failure to comply with a Canadian Human Rights Tribunal ordering an end to such discrimination (Article 6)[15]

The federal government funds First Nations child and family services on reserve through the Department of Indigenous and Northern Affairs (INAC), which was previously known as the Department of Aboriginal Affairs. INAC requires that First Nations child and family services agencies on reserve comply with provincial/territorial child welfare laws as a condition of funding. Pursuant to its own stated objectives, the First Nations Child and Family Services Program (FNCFS Program) is to provide for child welfare services on reserve that are reasonably comparable to those provided off reserve and are culturally appropriate.

On January 26, 2016, the Canadian Human Rights Tribunal (CHRT) released its decision on the complaint filed against the federal government in relation to the FNCFS Program.[16] It found that the Canadian government is racially discriminating against 165,000 First Nations children and their families by providing flawed and inequitable child welfare services. The key findings of the CHRT were:

- The FNCFS Program is discriminatory and promotes negative outcomes for Indigenous children and families.[17]
- The FNCFS Program provides an incentive to remove children from their homes as a first resort rather than a last.[18]
- The Government of Canada's "one-size fits all" approach to child welfare services does not work for children and families living on reserves.[19]

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[13] Viktoria Ivanova & Jason Brown, "Strengths of Aboriginal Foster Parents" (2011) 20:3 J of Child & Family Studies 279 at 279.
[14] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*, Final Report of the Truth and Reconciliation Commission of Canada, vol 1 (Toronto: James Lorimer & Company, 2015) at 180.
[15] FAFIA thanks Sarah Clarke, Anne Levesque, David Taylor and Sébastien Grammond for their analysis and staunch commitment to advocate on behalf of Indigenous children in Canada.
[16] *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs and Northern Development Canada)*, 2016 CHRT 2.
[17] *Ibid* at para 344.
[18] *Ibid* at para 344.
[19] *Ibid* at para 315.

- The FNCFS Program contains no mechanism to ensure child and family services provided to Indigenous Peoples living on reserves are reasonably comparable to these provided to children in similar circumstances off reserve.[20]
- The FNCFS Program causes Indigenous children and families to be denied the opportunity to remain together or be reunited in a timely manner. [21]
- The FNCFS Program is not culturally appropriate and did not meet the real needs of Indigenous children and their families nor take into account their historical, cultural and geographical circumstances.[22]

The CHRT ordered the Government of Canada to immediately cease discriminating against Indigenous children and their families and to ensure that Indigenous children are no longer denied services provided to other Canadians as a result of jurisdictional disputes between and within governments.[23]

At present, Canada has failed to comply with the decision. In fact, government documents indicate that Canada's current budget for its FNCFS Program pre-dates the decision and that Canada did not modify this funding following the release of the decision. In light of Canada's non-compliance with the decision, the Canadian Human Rights Tribunal has released three subsequent decisions ordering Canada to comply with its ruling and to cease its racially discriminatory conduct against First Nations children.[24] In a May 2017 order, the Tribunal stated that "Canada has repeated its pattern of conduct and narrow focus with respect to Jordan's Principle" and issued a third set of compliance orders.[25]

In June 2017, it was revealed that Canada has spent nearly one million dollars in legal fees seeking to avoid its compliance with the Canadian Human Rights Tribunal decision.[26] On June 23, 2017, just two days after National Aboriginal Day, Canada filed a notice of application before the Federal Court of Canada in which it seeks to quash the most recent order of the Canadian Human Rights Tribunal in the case.[27]

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[20] *Ibid* at para 334.
[21] *Ibid* at para 349.
[22] *Ibid* at para 465.
[23] *Ibid* at para 474.
[24] *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs and Northern Development Canada)*, 2016 CHRT 10; *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs and Northern Development Canada)*, 2016 CHRT 16; *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs and Northern Development Canada)*, 2017 CHRT 7; *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs and Northern Development Canada)*, 2017 CHRT 14.
[25] First Nations Child *and* Family Caring Society of Canada *v* Attorney General of Canada (representing the Minister of Indian and Northern Affairs *and Northern Development Canada*), 2017 CHRT 14.
[26] Tanya Talaga, "Ottawa Spent $707,000 in Legal Fees Fighting Decision that Protects Indigenous Children", *The Toronto Star* (2 June 2017), online: <https://www.thestar.com/news/canada/2017/06/02/ottawa-spent-707000-in-legal-fees-fighting-a-rights-decision-that-protects-indigenous-children.html> .
[27] *Caring Society v Canada*, (23 June 2017), Federal, FCTD T-918-17 (notice of application), online:

In the meantime, First Nations children and First Nations girls, in particular, continue to experience the tragic consequences of Canada's racially discriminatory conduct. It is no exaggeration to say that the impact is deadly. Since January 2017, three 12 year-old girls from the Northern Ontarian community of Wapekeka have lost their lives due to suicide.[28] According to the contested evidence filed by the Nishnawbe Aski Nation to the Canadian Human Rights Tribunal, these deaths could have been available had appropriate mental health services been available for these girls. [29]

VI. Recommendations

The Government of Canada should:

- **Withdraw its June 23rd, 2017 application for judicial review of the decision of the Canadian Human Rights Tribunal that affirms the equality rights of 165,000 First Nations children.**
- **Immediately comply with all other orders made by the Canadian Human Rights Tribunal with regards to the equality rights of First Nations children.**

The federal, provincial, territorial, and Indigenous governments commit to reducing the number of Indigenous children in care by:

- **Monitoring and assessing neglect investigations.**
- **Providing adequate resources to enable Indigenous communities and child-welfare organizations to keep Indigenous families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.**
- **Implement Jordan's Principle so that all Indigenous children have access to the same services as all Canadian children.**

The federal, provincial, and territorial governments should review all policies and practices to identify and eliminate the specific gender-based harms caused to Indigenous women and girls by current child welfare practice.

<https://fncaringsociety.com/sites/default/files/Notice%20of%20Application%20for%20Judicial%20Review%20-%20June%2023%202017.pdf>.

[28] CBC News Thunder Bay, "Wapekeka Suicides: A Survivor of a 'Pact' Speaks Out", *CBC News* (30 June 2017), online: <http://www.cbc.ca/news/canada/thunder-bay/suicide-pact-wapekeka-1.4184438> .

[29] *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (representing the Minister of Indian and Northern Affairs and Northern Development Canada)*, 2017 CHRT 7 (Evidence, Dr Michael Kirlew Affidavit), online: <https://fncaringsociety.com/sites/default/files/Affidavit%20of%20Dr.%20Michael%20Kirlew.%20FINAL.%20Sworn%20January%2027%202017Reduced.pdf> .

Sex Discrimination in the *Indian Act* (Articles 2 and 5)

I. CERD Committee's Concerns and Previous Recommendations

In 2007, the CERD Committee urged Canada to "to take the necessary measures to reach a legislative solution to effectively address the discriminatory effects of the Indian Act on the rights of Aboriginal women and children to marry, to choose one's spouse, to own property and to inherit, in consultation with First Nations organisations and communities, including aboriginal women's organisations, without further delay.[30]

Furthermore, in 2012, the CERD Committee expressed its concern that Canada had "not yet removed all discriminatory effects in matters relating to the Indian Act that affect First Nations women...[31] Despite this, Canada has not yet removed all the sex discrimination from the *Indian Act*,[32] and this discrimination continues to affect thousands of First Nations women and their descendants.

II. History of Sex Discrimination

Since its inception, 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 must be male. Indian women lost status when they married a non-Indian, while Indian men endowed Indian status on their non-Indian wives.[33]

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 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

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[30] UNCERD, 70th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/18 (2007) at para 15.
[31] UNCERD, 80th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at para 18.
[32] *Indian Act*, RSC 1985, c-15.
[33] Shelagh Day, "153 years of sex discrimination is enough",*The Toronto Star* (10 Janurary 2011) online: <https://www.thestar.com/opinion/editorialopinion/2011/01/10/153_years_of_sex_discrimination_is_enough.html>.

had lost status because of marriage to a non-Indian.[34] They were considered "re-instatees." A new two-parent rule for transmitting status was imposed on the female line. This rule applied to the reinstated women immediately, but was delayed for the 6(1)(a) male line.[35]

Since 1985, the deeply rooted sex discrimination, and the perpetuation of it by Bill C-31, has spawned a generation of litigation, including *McIvor v. Canada*,[36] *Matson v. Canada,*[37] *Descheneaux v. AG Canada,*[38] *and Gehl v. Canada.*[39] 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.

Bill C-3, *An Act to promote gender equity in Indian registration*[40] (which was the 2010 response of the Harper government to the *McIvor* v. *Canada* decision) failed, once more, to eliminate all sex discrimination in the *Indian Act*. It addressed some manifestations of the sex discrimination by introducing piecemeal improvements to the status of particular sub-groups, but left the heart of the sex discrimination that is inherent in the 6(1)(a) - 6(1)(c) hierarchy in place. Until this fundamental sex discrimination is removed, costly and time-consuming litigation will be necessary, as more sub-groups identify how the sex discrimination affects them, and challenge it in the courts.

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

After *McIvor v. Canada*, in August 2015 came a decision of the Quebec Superior Court in *Descheneaux v. AG Canada*.[41] 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,[42] and

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[34] Bill C-31, *An Act to amend the Indian Act*, RSC 1985, c 32 (1st Supp).
[35] 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 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/McIvor-letter-May-26.pdf>.
[36] *McIvor v Canada*, 2009 BCCA 153, 91 BCLR (4th) 1, online: <http://www.courts.gov.bc.ca/jdb-txt/ca/09/01/2009bcca0153err2.htm>.
[37] *Matson v Indian and Northern Affairs Canada*, 2013 CHRT 13.
[38] *Descheneaux v Canada (Procureur Général)*, 2015 QCCS 3555 [*Descheneaux*].
[39] *Gehl v Attorney General of Canada*, 2017 ONCA 319.
[40] *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 McIvor v. Canada (Registrar of Indian and Northern Affairs)*, online: <https://openparliament.ca/bills/40-3/C-3/> .
[41] *Descheneaux v Canada (Procureur Général)*, 2015 QCCS 3555.
[42] 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 McIvor and Jacob Grismer, Communication No. 2020/2010*

then granted an extension until July 3, 2017.[43] Plaintiffs in *Descheneaux* applied for a further court extension that was denied. The Quebec Court of Appeal subsequently granted an extension until August 9, 2017.

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)*,[44] 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.[45] This sex discrimination was not historically addressed by Bill C-3, when the Indian Act's status provisions were last amended in 2010.

In response to *Deschenaux* and to *Gehl*, the Government of Canada introduced Bill S-3, *An Act to amend the Indian Act (elimination of sex-based inequities in registration).*[46] Like C-3 Bill S-3, as originally introduced by the Government of Canada, was another piecemeal amendment designed (despite the promising name of the Bill) to address only the discrimination identified in *Deschenaux*, and *Gehl*, but not to remove the core of the sex discrimination in the *Indian Act*, which is rooted in the sex-based hierarchy between s. 6(1)(a) and s. (6(1)(c).

Bill S-3 was considered by the Senate Committee on Aboriginal Peoples, and in that Committee, the Senators adopted an amendment, which would have the effect of eliminating the sex-based hierarchy by entitling Indian women and their descendants to full 6(1)(a) status on the same footing with Indian men and their descendants.[47] Dubbed the "(6(1)(a) all the way amendment"

(20 June 2016), online: <http://povertyandhumanrights.org/wp-content/uploads/2016/06/Mcivor-Petitioners-Objection-to-Suspension-Request.pdf> .

[43] 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/>.

[44] *Gehl v Attorney General of Canada*, 2017 ONCA 319.

[45] 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> .

[46] 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/> .

[47] *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>.

it was passed by the full Senate on June 1, 2017. The Senate's amended Bill S-3 went back to the House of Commons, where the Liberal majority of Members of Parliament stripped out the Senate's 6(1)(a) all the way amendment and returned it to the Senate. The Senate rose for summer recess without reconsidering the Bill without its amendment. Because the Court's deadline for action on curing the unconstitutional discrimination identified in *Deschenaux* has now been extended to August 9, 2017, it is expected that the Senate may be recalled during the summer recess, or that it will immediately reconsider Bill S-3 on its return on September 19, 2017.

The Senators and virtually all the witnesses who testified before Senate and House of Commons Committees agreed that Bill S-3 does not remove all the sex discrimination from the Indian Act, and that it was time to do so without further delay.[48] The Government of Canada contended that further consultation was needed, but many witnesses pointed out that Canada has been consulting First Nations communities about *Indian Act* sex discrimination since the 1940s and that Canada knows everything it needs to know.

INAC offered two arguments to support the unamended Bill S-3. INAC agreed that there are more women and their descendants who could be entitled to Indian status if Indian women born before April 17, 1985 were granted full 6(1)(a) status like their male counterparts.[49] But INAC officials defended not putting the women on a footing of equality on the grounds that they are "balancing individual and collective rights" and are concerned about the reaction of communities to the potential need to include more Indians.[50]

FAFIA takes fundamental exception to this argument. First Nations, recognized as Indian bands under the *Indian Act*, and communities have no legitimate say in whether the Government of Canada continues to discriminate against Indian women because of their sex. In fact, 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. Aboriginal and treaty rights granted under section 35 of the Canadian constitution[51] must not discriminate based on gender. Additionally, *the United Nations Declaration on the Rights of Indigenous Peoples* states that all Aboriginal rights and

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[48] 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>.
[49] Canada, Parliament, Senate, Standing Committee on Aboriginal Peoples, *Evidence,*42nd Parl, 41st Sess, No 13 (29 November 2016), a6t 14:26, online: <https://sencanada.ca/en/Content/SEN/Committee/421/appa/14ev-52958-e>; Letter from Sharon McIvor to The Senate of Canada, The Right Honourable Justin Trudeau, The Honourable Carolyn Bennett, and The Honourable 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/McIvor-letter-May-26.pdf>.
[50] Canada, Parliament, Senate, Standing Committee on Aboriginal Peoples, *Evidence,* 42nd Parl, 41st Sess, No 14 (6 December 2016), at 14:60, online: <https://sencanada.ca/Content/SEN/Committee/421/APPA/pdf/14issue.pdf>.
[51] *The Constitution Act,* 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Indigenous law must not discriminate based on gender.[52] Most, if not all, Indigenous First Nations and communities do not wish to see discrimination on the basis of sex continue.[53]

Further, status and band membership were separated in the *Indian Act* in 1985, and Indian status is a relationship between individual Indigenous persons and the federal government. Band membership involves seperate issues and entitlements from Indian status and is determined by the communities by themselves, if they so choose. 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.

Further, 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.

It was also pointed out by Senators and witnesses that both the IACHR report[54] and the CEDAW Committee Report[55] 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 at a moment when a new Liberal Government has made a public commitment to women's equality, has a Prime Minister who calls himself a feminist, and wishes to establish a new nation-to-nation relationship with Indigenous peoples, that same Government refuses to remove the sex discrimination from the *Indian Act* that continues to

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

[53] *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>.

[54] 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> .

[55] 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>.

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 Bill C-3's deficiencies, Sharon McIvor filed a petition with the UN Human Rights Committee (*McIvor* v. *Canada* (Communication No. 2020/2010), claiming that the continuing sex discrimination violates the *International Covenant on Civil and Political Rights*.[56]

The exchange of submissions between Canada and Ms. McIvor was completed in 2012. Since 2012, there was no action on Ms. McIvor's file until May 9, 2016, when Canada 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.[57] At the same time, Canada stated that, if its request to the Committee was not granted, it maintained that no remedy should be granted to Ms. McIvor. Canada made a second request asking for a further extension of the suspension.[58] The Committee granted Canada's requests and suspended consideration of the McIvor petition until March 2017.[59]

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.

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

[57] 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 McIvor 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>.

[58] Poverty and Human Rights Centre, *Third Supplemental Submission of the Governemnt of Canada on the Admissability and Merits of the Communication to the Human Rights Committee of Sharon McIvor and Jacob Grismer Communication No. 2020/2010* (28 Feburary 2017) at para 38. online:<http://povertyandhumanrights.org/wp-content/uploads/2017/03/Canadas-Third-Supplemental-Submission28022017.docx>.

[59] *Ibid* at para 5 .

VI. Recommendations

The Government of Canada should:

- **Implement the CEDAW, Human Rights Committee, and CERD 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.**

The Social and Economic Conditions of Indigenous Women and Girls (Articles 2 and 5)

I. CERD Committee's Concerns and Previous Recommendations

The CERD Committee noted its concerns about the disadvantaged conditions of Indigenous peoples in both its 2007[60] and 2012 Concluding Obserations, and made specific reference to safe drinking water, employment, health services, housing, education, and child welfare.[61]

General Recommendation No 23: Rights of Indigenous Peoples (1997) also included the following recommendation:

> (c) Provide Indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;[62]

The CEDAW Committee in its 2016 Concluding Observations on Canada made the following recommendation:

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[60] UNCERD, 70th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/18 (2007) at para 21.
[61] UNCERD, 80th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at para 19.
[62] UNCERD, 51st Sess, General Recommendation 23: Rights of Indigenous Peoples, UN Doc A/52/18, Annex V (1997) at para 4(c), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.6 (2003).

> Develop a specific and integrated plan for addressing the particular socioeconomic conditions affecting [Indigenous] 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 campaigns to raise awareness within [Indigenous] communities about women's human rights and to combat patriarchal attitudes and gender stereotypes...[63]

II. Deteriorating Socio-Economic Conditions of Indigenous Women and Girls

In Canada, the socio-economic conditions of Indigenous peoples generally, and Indigenous women and girls specifically, are extremely poor. Former Special Rapporteur on the rights of Indigenous peoples, James Anaya, concluded in his 2014 report on Canada that: "The most jarring manifestation of human rights problems is the distressing socio-economic conditions of [Indigenous] peoples in a highly developed country".[64] Anaya emphasizes that there have been no improvements in the socio-economic conditions of Indigenous peoples since the last report in 2004, a finding confirmed by Canada's Auditor General.[65]

Indigenous peoples suffer from a lack of access to housing, safe drinking water and sanitation, adequate health services, economic development, education and employment.[66] Indigenous women and girls are particularly disadvantaged due to ongoing discrimination in the *Indian Act* and Canada's related policies and funding mechanisms, which often disentitle them from essential social programs.[67] Indigenous women and girls are also particularly vulnerable to abuse within this context of poor socio-economic conditions, which Anaya categorized as "a continuing crisis".[68]

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[63] UNCEDAW, Concluding Observations on the 8th and 9th Periodic Reports of Canada, UN Doc CEDAW/C/CAN/CO/8-9 (2016) at para 29(a), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement> .

[64] 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 15, online: <http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>; Auditor General of Canada, Report, "Status Report of the Auditor General of Canada, Chapter 4: Programs for First Nations on Reserves" (June 2011) at 1-2, online: <http://www.oag-bvg.gc.ca/internet/docs/parl_oag_201106_04_e.pdf> .

[65] *Ibid*.

[66] Pamela Palmater, "Stretched Beyond Human Limits: Death by Poverty in First Nations" (2011) No 65/66 Canadian Rev of Social Policy 112.

[67] *Indian Act*, RSC 1985, c-15; Pamela Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Saskatoon: Purich Publishing, 2010).

[68] 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 80, online: <http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>.

Below are some examples of how the health and living conditions of Indigenous women and girls continue to deteriorate:

- **Children in care crisis**: 48% of children in state care (foster care) in Canada are Indigenous (more than 85% in Manitoba);[69] the number of children in care has "increased rapidly."[70]
- **Water and sanitation crisis**: 113+ First Nations do not have clean drinking water;[71] 73% of all water systems and 64% of wastewater systems on reserves are at medium to high risk;[72] some reserves have been under boil water advisories for over 10 years.[73]
- **Housing crisis**: 28% of First Nations people live in over-crowded housing; 43% of First Nation homes are in need of major repair;[74] there is a 110,000 home backlog on First Nations reserves;[75] and Indigenous women and children are vulnerable to homelessness upon marriage breakdown due to the fact that the possession of homes on reserves are most often held by men.[76]
- **Health crisis**: life expectancy for Indigenous people is currently eight years less than non-Indigenous Canadians;[77] life expectancy is projected to be 5-15 years less than non-Indigenous Canadians in 2017;[78] Indigenous peoples suffer from higher rates of chronic

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[69] Statistics Canada, "Living Arrangements of Aboriginal Children Aged 14 and Under", by Annie Turner, Catalogue No 75-006-X (Ottawa: Statistics Canada, 2016) at 1, online: <http://www.statcan.gc.ca/pub/75-006-x/2016001/article/14547-eng.pdf> .

[70] Deena Mandell et al, "Partnerships for Children and Families Project" (Wilfred Laurier University, 2003) at 3, online: <https://legacy.wlu.ca/documents/7179/Aboriginal_child_welfare.pdf>; Pamela Gough et al, "Pathways to the Overrepresentation of Aboriginal Children in Care" (2005) No 23E Centre of Excellence for Child Welfare 1 at 1, online: <http://cwrp.ca/sites/default/files/publications/en/AboriginalChildren23E.pdf> .

[71] Health Canada, "Drinking Water Advisories: First Nations South of 60" (2016), online: <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-dwa-eau-aqep-eng.php> . According to Health Canada there are 92 First Nations on boil water advisories (in BC, there are an additional 21 First Nations on boil advisories). See also First Nations Health Authority, "Drinking Water Safety Program" (2016), online: <http://www.fnha.ca/what-we-do/environmental-health/drinking-water-safety-program> .

[72] Neegan Burnside, "National Assessment of First Nations Water and Wastewater Systems: National Roll-Up Report Final" (2011) at ii, online: <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/enr_wtr_nawws_rurnat_rurnat_1313761126676_eng.pdf> .

[73] Human Rights Watch, "Make it Safe: Canada's Obligation to End the First Nations Water Crisis" (2016) at 29-39, online: <https://www.hrw.org/sites/default/files/report_pdf/canada0616web.pdf> .

[74] Statistics Canada, "Aboriginal Peoples: Fact Sheet for Canada", by Karen Kelly-Scott & Kristina Smith, Catalogue No 89-656-X2015001 (Ottawa: Statistics Canada, 2015) at 4, online: <http://www.statcan.gc.ca/pub/89-656-x/89-656-x2015001-eng.pdf> .

[75] Assembly of First Nations, "National First Nations Housing Strategy" (2010) at 1, online: <http://www.afn.ca/uploads/files/housing/afn_national_housing_strategy.pdf> .

[76] Pamela Palmater, "Marital Real Property on First Nation Reserves" (2015) Chair in Indigenous Governance, Ryerson University, online: <http://www.ryerson.ca/chair-indigenous-governance/research-projects/past/matrimonial-real-property/> .

[77] Auditor General of Canada, Report 4, "Access to Health Services for Remote First Nations Communities" (2015), online: <http://www.oag-bvg.gc.ca/internet/English/parl_oag_201504_04_e_40350.html> .

[78] Statistics Canada, "Life Expectancy" (2015), online: <http://www.statcan.gc.ca/pub/89-645-x/2010001/life-expectancy-esperance-vie-eng.htm>.

and infectious diseases, injuries, substance abuse and mental health issues;[79] rates of heart disease and stroke have declined in Canada, but continue to increase for Indigenous peoples;[80] Indigenous women have higher rates of heart disease and stroke compared to Indigenous men and non-Indigenous women.[81]

- **Education crisis**: the gap in education levels between Indigenous peoples and non-Indigenous people is widening – it would take at least 28 years to close the gap;[82] more than 9,500 Indigenous peoples are on a waiting list to obtain post-secondary education;[83] the number of Indigenous people funded for post-secondary education has decreased by 18.3% since 1997;[84] and there have been drastic cuts to First Nation educational institutes that have crippled Indigenous language immersion programs for primary students.[85]
- **Suicide crisis**: First Nation suicide rates are 2-6 times higher than those of Canadians and Inuit rates are 10 times higher;[86] 38% of all Indigenous youth deaths are from suicide,[87] three 12 year old girls in the town of Wapekeka died by suicide in 2016;[88] Indigenous women have higher rates of suicide attempts;[89] some First Nations have the highest suicide rates in the world;[90] and suicide rates are increasing.[91]

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[79] *Ibid*; Heart and Stroke Foundation, "Aboriginal Peoples, Heart Disease and Stroke: Position Statement" (2010) at 1.
[80] *Ibid* at 3.
[81] Heart and Stroke Foundation of Canada, "Women, Heart Disease and Stroke in Canada: Issues and Options" (1997) at 1, online: <http://data.library.utoronto.ca/datapub/codebooks/utm/canheart/CHH/womanhrt.pdf>.
[82] Don Drummond & Ellen Rosenbluth, "The Debate on First Nations Education Funding: Mind the Gap" (2013) Queen's University Working Paper 49 Policy Studies at 2.
[83] Auditor General for Canada, "Report of the Auditor General for Canada: Chapter 5: Indian and Northern Affairs Canada – Education Program and Post-Secondary Student Support" (2004) at 20, online: <http://www.oag-bvg.gc.ca/internet/docs/20041105ce.pdf>.
[84] John Tasker, "Fewer First Nations students receiving funds for post-secondary education" *CBC News* (12 September 2016), online: <http://www.cbc.ca/news/politics/first-nations-cap-higher-education-1.3753021>.
[85] Michael Erskine, "Ottawa Cuts its Portion of Kenjgewin Teg Funds by 75%", *Manitoulin Expositor* (24 August 2016), online: <http://www.manitoulin.ca/2016/08/24/ottawa-cuts-portion-kenjgewin-teg-funds-75/>.
[86] Aboriginal Healing Foundation, "Suicide Among Aboriginal People in Canada" (2007) at 14, online: <http://www.douglas.qc.ca/uploads/File/2007-AHF-suicide.pdf>.
[87] National Aboriginal Health Organization, "Backgrounder: Suicide Among Aboriginal People in Canada" (2008), online: <http://www.naho.ca/media-releases/04_04_2008BG.pdf>.
[88] CBC News Thunder Bay, "Wapekeka Suicides: A Survivor of a 'Pact' Speaks Out", *CBC News* (30 June 2017), online: <http://www.cbc.ca/news/canada/thunder-bay/suicide-pact-wapekeka-1.4184438> .
[89] Sarah Hamid-Balma, ed., "Aboriginal People" (2008) 5:1 *Visions* at 6, online: <http://www.heretohelp.bc.ca/sites/default/files/visions_aboriginal_people.pdf>.
[90] Martin Patriquin, "Canada, home to the suicide capital of the world", *Maclean's* (30 March 2012), online: <http://www.macleans.ca/news/canada/canada-home-to-the-suicide-capital-of-the-world/>.
[91] Laura Eggertson, "Aboriginal Youth Suicide Rises in Northern Ontario" (2015) 187:11 *Canadian Medical Association Journal* at 1, online: <http://www.cmaj.ca/content/187/11/E335.full.pdf+html>; ; Jody Porter, "3rd Girl Involved in Suicide Pact Dies in Remote Ontario First Nation" *CBC News* (14 June 2017), online:<http://www.cbc.ca/news/canada/thunder-bay/wapekeka-3rd-suicide-1.4160928>.

- **Prison crisis**: 36% of the Canadian prison population is Indigenous women;[92] imprisonment of Indigenous women has increased 90% in the last decade;[93] incarceration rates for Indigenous youth are eight times higher than for Canadian youth overall;[94] 41% of admissions to detention were Indigenous youth and Indigenous girls represent 53% of youth in corrections;[95] and incarceration rates for all Indigenous peoples are increasing[96].
- **Poverty crisis**: 60% of Indigenous children living on reserve live in poverty (76% in Manitoba First Nations) compared to 13% for non-Indigenous and non-racialized Canadians; poverty rates have worsened in the last five years;[97] Indigenous women are more likely to be single mothers and disproportionately live in poverty compared to Indigenous men and non-Indigenous women.[98]
- **Crisis of violence**: There are over 1,181 known cases of murdered and disappeared Indigenous women and girls;[99] research indicates the number is likely more than 4,000;[100] Indigenous women represent 16% of homicide victims but only 4% of the female Canadian population;[101] while homicide rates are decreasing for Canadian women, they are increasing for Indigenous women and girls.[102]

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[92] Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.
[93] *Ibid*.
[94] Justice Canada*, A One-Day Snapshot of Aboriginal Youth in Custody Across Canada: Phase II,* (Ottawa: Department of Justice Canada,2004) at iii, online: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/yj-jj/yj2-jj2/yj2.pdf>.
[95] Statistics Canada, *Youth correctional statistics in Canada, 2013/14*, by Correctional Services Program Catalogue No 85-002-X (Ottawa: Statistics Canada,2015), online: <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14164-eng.htm>.
[96] Office of the Correctional Investigator*, Backgrounder: Aboriginal Offenders – A Critical Situation* (Ottawa: Office of the Correctional Investigator,2012), online: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>.
[97] David Macdonald & Daniel Wilson, "Shameful Neglect: Indigenous Child Poverty in Canada" (2016) 5 Canadian Centre for Policy Alternatives at 5-6, online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National Office/2016/05/Indigenous_Child _Poverty.pdf>.
[98] Aboriginal Affairs and Northern Development Canada, *Aboriginal Women in Canada: A Statistical Profile from the 2006 Census*, (Ottawa: Minister of Aboriginal Affairs and Northern Development, 2012) at ii-iv, online: <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_rs_pubs_ex_abwch_pdf_1333374752380_eng.pdf>.
[99] Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview,* (Ottawa: RCMP,2014) at 3, online: <http://www.rcmp-grc.gc.ca/wam/media/460/original/0cbd8968a049aa0b44d343e76b4a9478.pdf> [*RCMP Report*].
[100] John Tasker, "Confusion Reigns Over Number of Missing, Murdered Indigenous Women", *CBC News* (16 February 2016), online: <http://www.cbc.ca/news/politics/mmiw-4000-hajdu-1.3450237>.
[101] Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview,* (Ottawa: RCMP,2014) at 7, 9, online: <http://www.rcmp-grc.gc.ca/wam/media/460/original/0cbd8968a049aa0b44d343e76b4a9478.pdf>.
[102] *Ibid* at 9.

- **Cultural crisis**: 96% of Indigenous languages are at high risk of extinction (60/63);[103] Indigenous peoples lack access to 99% of their traditional lands and resources;[104] extractive industries cause environmental destruction disproportionately on or near Indigenous lands impacting socio-economic conditions;[105] there is an increasing risk of violence to Indigenous women[106] and criminalization of land and water defenders, many of whom are women.[107]

There has been no improvement in socio-economic conditions in many First Nations.[108] Canada's Auditor General has noted the following reasons for this:

- Canada does not provide adequate, equitable or sufficient funding for critical social programs and emergency management;[109]
- Decision-making for program funding for First Nations lacks transparency, does not adhere to relevant policies, and appears "arbitrary";[110]
- Canada's attempts to implement recommendations that would have the greatest impact on the health and well-being of First Nations have repeatedly failed;[111] and

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[103] Site for Language Management in Canada, "Native Peoples and Languages" *University of Ottawa*, (2016), online: <https://slmc.uottawa.ca/?q=native_peoples_languages>.
[104] Arthur Manuel, *Unsettling Canada: A National Wake-up Call* (Toronto: Between the Lines, 2015) at 8.
[105] Alexander Miller, *From the Indian Act to the Far North Act: Environmental Racism in First Nations Communities in Ontario* (Kingston: Queen's University Department of Enviornmental Studies, 2016), online: <http://www.queensu.ca/ensc/sites/webpublish.queensu.ca.enscwww/files/files/501/Miller_ENSC501.pdf>; Beverly Jacobs,"Environmental Racism on Indigenous Lands and Territories" (Paper delivered at the Canadian Political Science Association's Annual Conference, 20 May 2010), online: <https://www.cpsa-acsp.ca/papers-2010/Jacobs.pdf>.
[106] Pamela Palmater, "Corporate Conquistadors Rape Indigenous Lands and Bodies", *Venezuela: Telesur English*, (16 August 2016), online: <http://www.telesurtv.net/english/opinion/Corporate-Conquistadors-Rape-Indigenous-Lands-and-Bodies--20160816-0011.html>; Andrea Woo, "Study Shows Link Between BC Extraction Industries, Domestic Abuse", *The Globe and Mail* (24 July 2014), online: <http://www.theglobeandmail.com/news/british-columbia/mining-forestry-tied-to-domestic-violence/article19735561/>.
[107] James Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive Industries and Indigenous Peoples*, UNOHCHR, 24th Sess, UN Doc A/HRC/24/41 (2013) at paras 20-23, online: <http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>; Mining Watch Canada, *In the National Interest? Criminalization of Land and Environment Defenders in the Americas* (Ottawa: Mining Watch Canada, 2015), online: <http://miningwatch.ca/sites/default/files/inthenationalinterest_fullpaper_eng_1.pdf>.
[108] Statistics Canada, *The Community Well-Being Index: Report on Trends in First Nations Communities, 1981-2011,* (Ottawa: Statistics Canada, 2015), online: <https://www.aadnc-aandc.gc.ca/eng/1345816651029/1345816742083>.
[109] Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons-: Chapter 4: First Nations Child and Family Services Program – Indian and Northern Affairs Canada* (Ottawa: Office of the Auditor General,2008) at 2, online: <http://www.oag-bvg.gc.ca/internet/docs/aud_ch_oag_200805_04_e.pdf>; Auditor General of Canada, *Report of the Auditor General for Canada: Chapter 6: Emergency Management on Reserves*(Ottawa: Office of the Auditor General,2013) at 2, online: <http://www.oag-bvg.gc.ca/internet/docs/parl_oag_201311_06_e.pdf>.
[110] Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons: Chapter 5: First Nations Policing Program – Public Safety Canada*, (Otttawa: Office of the Auditor General, 2014) at 12, online: <http://www.oag-bvg.gc.ca/internet/English/parl_oag_201405_05_e_39336.html>.

- Information that would give a clear picture of crisis in First Nations is not tracked, adequately recorded, maintained, or reported to Parliament.[112]

The Auditor General of Canada concluded that these long-standing problems in First Nations are expected to continue unless Canada acts on the recommendations and makes significant financial investments in its Indigenous peoples.[113] The Truth and Reconciliation Report made 94 Calls to Action, which included increasing funding for education, health, and child welfare.[114] Anaya made similar calls for more funding for housing, health, child welfare, and education.[115] Despite promises to the contrary, Canada has not addressed the chronic underfunding in these areas.[116] The 2% cap on education funding put in place in 1996 is still in place and no extra money was given for post-secondary education despite federal promises.[117]

The CEDAW Committee recognized in its Inquiry Report on missing and murdered Indigenous women and girls,[118] that the poverty and social disadvantage of Indigenous women exacerbates

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[111] Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons: Chapter 5: First Nations Policing Program – Public Safety Canada*, (Ottawa: Office of the Auditor General, 2014) at 12, online: <http://www.oag-bvg.gc.ca/internet/English/parl_oag_201405_05_e_39336.html>.
Auditor General of Canada*, 2011 June Status Report of the Auditor General of Canada to the House of Commons – Chapter 4: Programs for First Nations on Reserves*, (Ottawa: Office of the Auditor General, 2011) at 1-2, online: <http://www.oag-bvg.gc.ca/internet/docs/parl_oag_201106_04_e.pdf>.

[112] Auditor General of Canada, *Report of the Auditor General of Canada: Chapter 5: Indian and Northern Affairs Canada – Education Program and Post-Secondary Student Support*, (Ottawa: Office of the Auditor General, 2004) at 1, online: <http://www.oag-bvg.gc.ca/internet/docs/20041105ce.pdf>; Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons: Chapter 6: Federal Government Support to First Nations – Housing on Reserves*, (Ottawa: Office of the Auditor General, 2003) at 2, 18, 21-2, online: <http://www.oag-bvg.gc.ca/internet/docs/20030406ce.pdf>.

[113] *Ibid* at 2.

[114] Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), online: <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf>.

[115] James Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive Industries and Indigenous Peoples*, UNOHCHR, 24th Sess, UN Doc A/HRC/24/41 (2013) at paras 20-23, online: <http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>.

[116] Right Honourable Prime Minister Justin Trudeau, "Remarks by Justin Trudeau at the Assembly of First Nations 36th (delivered at the Annual General Assembly of First Nations, 10 December 2015), online: <https://www.liberal.ca/realchange/justin-trudeau-at-the-assembly-of-first-nations-36th-annual-general-assembly/>.

[117] Joanna Smith, "First Nations Funding Cap is Still There, Despite Trudeau's Promise", *Canadian Press* (16 June 2016), online: <http://www.huffingtonpost.ca/2016/06/16/political-will-to-lift-first-nations-funding-cap-is-there-needs-time-chief_n_10515960.html>.

[118] 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 Discrimination against Women*,UNCEDAW, 2015, UN Doc CEDAW/C/OP.8/CAN/1

every form of social, sexual and racialized subordination that they experience. High rates of domestic and sexualized violence are one of the manifestations of poor socio-economic conditions and the ongoing discrimination against Indigenous women and girls.[119] Profound deprivations of personal autonomy, liberty, and safety result.

III. Conclusion

Indigenous women and girls continue to suffer from deteriorating health and living conditions. They are subject to unacceptably high levels of violence and murder, their children are disproportionately taken by the State, and they are one of the fastest growing prison populations in Canada. The living situations of many Indigenous women and girls continue to deteriorate.

Many recommendations have been made to Canada to improve the socio-economic living conditions of Indigenous women and girls; little concrete action has been taken.

IV. Recommendations

The Government of Canada should:

- **Immediately provide adequate needs-based funding for all social programs on-reserve at least on par with provincial funding levels, taking into account significant additional investments which will be required to address the housing and education backlogs, long-standing infrastructure deficiencies, and cumulative social and health problems that developed from lack of funding, with special attention to the particular disadvantages faced by Indigenous women and girls.**
- **Create joint emergency task force(s) in partnership with, and with adequate funding to support, First Nations, Indigenous women's groups, organizations, and experts to create a strategic plan to address long-standing urgent crises such as emergency management, children in care, over-imprisonment of Indigenous women, and high suicide rates.**
- **Work in partnership with First Nations, Indigenous women's groups, organizations and experts to develop legislation, policy and funding support mechanisms to fully implement UNDRIP with a special and urgent focus on extractive activities taking place in Canada and the need for free, informed and prior consent, special protections for Indigenous women and girls, and funding for suitable research, legal support and Indigenous institutions to fully and properly engage in ongoing consultations and decision-making, before allowing any further activity on or near Indigenous lands.**

(2015) at paras 111 – 117, 218, online: <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf>.

[119] *Ibid* at paras 36-37.

- **Implement the recommendations of the Auditor General of Canada, Truth and Reconciliation Commission, UN Special Rapporteur on rights of Indigenous peoples, the CEDAW Committee and other United Nations treaty bodies to address the socio-economic crises faced by Indigenous women and girls.**
- **Investigate and address the vulnerabilities associated with Indigenous children in care, runaways, and homeless Indigenous women and children to police racism and sexualized violence.**

Murders and Disappearances of Indigenous Women and Girls (Article 5)

I. CERD Committee's Concerns and Previous Recommendations

In its 2007 Concluding Observations, the CERD Committee stated:

> In light of its general recommendation no. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party strengthen and expand existing services, including shelters and counselling, for victims of gender-based violence, so as to ensure their accessibility. Furthermore, it recommends that the State party take effective measures to provide culturally-sensitive training for all law enforcement officers, taking into consideration the specific vulnerability of aboriginal women and women belonging to racial/ethnic minority groups to gender-based violence.[120]

In 2012, the CERD Committee expressed its concern about the high levels of violence against Indigenous women and girls, including murders and disappearances. The Committee urged Canada to take concerted steps to address this violence.[121] Since the last CERD review, other United Nations expert bodies, and the Inter-American Commission on Human Rights, have made recommendations to Canada, and undertaken investigations. FAFIA is deeply concerned about Canada's failure to act effectively to bring the continuing crisis of murders and disappearances to an end.

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[120] UNCERD, 70th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/18 (2007) at para 20.

[121] Committee on the Elimination of Racial Discrimiaton, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, UNCERD, 80th Sess, UN Doc CERD/C/CAN/19-20 (2012) at para. 17, online: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.19-20.pdf>.

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 Convention on the Elimination of Discrimination against Women (CEDAW) Committee to initiate an inquiry[122] under Article 8 of the Optional Protocol[123] to the *Convention on the Elimination of Discrimination against Women*, into the crisis of murders and disappearances of Indigenous women and girls. FAFIA and NWAC also requested the Inter-American Commission to investigate murders and disappearances of Indigenous women in British Columbia, Canada.

In 2015, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) issued the report of its investigation under Article 8 of the Optional Protocol to the *Convention on the Elimination of Discrimination against Women* on missing and murdered Indigenous women and girls in Canada. [124] 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 in British Columbia, Canada.[125]

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.

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[122] *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 force 22 December 2000, accession by Canada 18 October 2002).

[123] "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>.

[124] 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).

[125] 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>.

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.

III. The National Inquiry: Implementation of one CEDAW and IACHR recommendation

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.[126]

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. 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.[127]

The Inquiry Terms of Reference (ToR)[128] fall short in the following ways:

a. 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.

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[126] 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>.

[127] 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-mmiwg/>;
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>.

[128] 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>.

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. [129] The Canadian Human Rights Commission (CHRC) made the same recommendation.[130] But the terms of reference do not mandate this.

b. No explicit reference to police and the criminal justice system

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

The Government of Canada has stated that the language of the terms of reference is broad enough to include policing and the justice system, and examination of them is intended to be included. The National Inquiry Commissioners have repeated the assurance that policing is a government service covered under their mandate.[131] FAFIA remains concerned that inquiry into policing and prosecution matters is weakened because the ToR are not explicit, [132] and to date in the Inquiry's work, there are no signs that this is a major focus of concern or attention.

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[129] FAFIA, NWAC, Canadian Journal of Women and the Law, *22 Recommendations for a National Inquiry on Missing and Murdered Indigenous Women and Girls* (2016), online: <http://fafia-afai.org/wp-content/uploads/2016/02/MMIWinquiryrecommendationFINAL_English.pdf>; 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>.

[130] 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>.

[131] 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>.

[131] 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>.

[132] 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>.

c. 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.[133] Alternatively, the federal. provincial and territorial governments should be collaborating on a mechanism outside the Inquiry that will provide an independent review.

d. Current state of collapse

In addition to obvious weaknesses in its mandate, the Inquiry appears to be in a state of collapse.[134] 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 one hearing. Various staff members have resigned.[135] The Chief Commissioner, Marion Buller, has explained on numerous occasions that they are working on getting their procedures and supports in place for hearing the stories of family members of disappeared and murdered Indigenous women and girls.[136]

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[133] *Ibid*.

[134] 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/mmiwg-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.mmiwg-ffada.ca/files/ni-response-to-open-letter-en.pdf>.

[135] "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>.

[136] 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>.

However, with the exception of one hearing in Whitehorse, this has not happened yet.

Further, there is no sign of the commencement of a 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. FAFIA welcomed the launch of the National Inquiry and is committed to assisting the Commissioners to do their work. 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.[137]

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

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).[138] Although the RCMP issued reports in 2014 and 2015, which provided total numbers exceeding previous

[137] 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>

[138] 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>.

public estimates of murders and disappearances, and exceeding the RCMP's own previous figures,[139] there are significant problems with this RCMP data.[140]

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.[141]

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.[142] 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.[143]

The RCMP, which is one police force among hundreds in Canada, has published a National Missing Persons Strategy.[144] However, the Action Plan promised by this Strategy has not been developed, or made public.[145]

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[139] 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*.

[140] 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>.

[141] 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>

[142] 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>.

[143] yal 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>.

[144] 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>.

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

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[145] 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.

[146] 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.[147] 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.[148] In addition, $1.1 billion has been allocated for "improving Indigenous communities".[149] 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.

i. 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.[150] 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 Watch[151] 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.[152] Human Rights Watch reported eight incidents in which police physically assaulted or used questionable force against girls under the age of 18.[153] Four years after the Human Rights Watch report, the Chairperson of the Civilian Review and

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[147] 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>.
[148] *Ibid*.
[149] *Ibid*.
[150] 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.
[151] 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>.
[152] 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>.
[153] *Ibid*.

Complaints Commission for the RCMP issued a report, that broadly confirms the findings of the 2013 Human Rights Watch Report.[154]

In June 2017, Human Rights Watch issued a new report on police relations with Indigenous women in Saskatchewan.[155] This report documents a relationship fractured by the active involvement of the RCMP in the enforcement of residential schools 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. [156]

Women in Val D'Or Quebec have come forward to publicly complain about physical and sexual abuse by police.[157] 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.[158] The extent of police brutality towards Indigenous women and girls is shocking and it continues unabated.[159] This conduct is current the subject of a public inquiry in Quebec.[160]

High levels of sexism[161], racism,[162] and police corruption[163] generally, and towards Indigenous women and girls specifically, further compound the problem, as most complaint processes are through the same offending police forces.

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[154] 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.crcc-ccetp.gc.ca/en/chairs-final-report-after-commissioners-chair-initiated-complaint-and-public-interest-investigation>

[155] 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>.

[156] *Ibid*.

[157] "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>.

[158] 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>.

[159] 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.

[160] 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>

[161] 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

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

ii. 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. [164] Complaints against the police are notoriously unsuccessful.[165] High levels of sexism[166], racism,[167] and police corruption[168] generally, and towards Indigenous women and

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Discrimination", *CBC News* (18 February 2016), online: <http://www.cbc.ca/news/politics/rcmp-sexual-harassment-history-1.3453413>.

[162] 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, 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>.

[163] 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>.

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

[165] Giuseppe Valiante, "RCMP Rejects 90% of Formal Complaints", *IF Press* (24 October 2014), online: <http://www.ifpress.com/2014/10/27/rcmp-rejcts-90-of-formal-complaints>.

[166] 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>.

[167] 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>.

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.

V. Recommendations

The Government of Canada should:

- **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 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.**
- **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.**
- **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.**

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[168] 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>.

- **Review Canada's domestic and international human rights obligations in regard to the protection of Indigenous women and girls from racism and violence committed by state actors, such as law enforcement, lawyers, 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.**

VI. Recent UN Treaty Body Comments on Murders and Disappearances

a. Human Rights Committee (2015)

Canada was reviewed by the Human Rights Committee in July 2015, and by the Committee on Economic, Social and Cultural Rights in February 2016. FAFIA and NWAC made a joint submission to the Human Rights Committee[169] 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.[170] FAFIA and NWAC made a joint submission to the CEDAW Committee.[171]

The Human Rights Committee called on Canada:

> as a matter of priority, [to] (a) address the issue of murdered and missing [Indigenous] women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with [Indigenous] women's organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators and provide reparation to victims; and (d) address the root causes of violence against [Indigenous] women and girls.[172]

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[169] 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>.
[170] 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>.
[171] 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>
[172] 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:

The Human Rights Committee asked Canada to provide information on the implementation of the above recommendation within one year—by August 2016.[173]

b. Committee on Economic, Social and Cultural Rights (2016)

In its 2016 periodic review of Canada, the Committee on Economic, Social and Cultural Rights noted its concern "about the persistence of violence against women in the State party, which is particularly prevalent among [Indigenous] women and girls and further exacerbated by the economic insecurity of women".[174] The Committee recommended that:

> the State party address violence against women and girls in a holistic manner. Inter alia, the State party is encouraged to study the link between poverty, ethnic origin and vulnerability to violence and take effective measures aimed at preventing and eradicating violence against women and girls. The Committee also recommends that the State party step up its efforts to protect victims of violence, including by ensuring the availability of a sufficient number of adequate shelters for victims of violence, as well as long-term housing solutions and adequate social assistance.[175]

c. Committee on the Elimination of Discrimination against Women (2016)

In October 2016, Canada was reviewed by the CEDAW Committee, and the Committee made this recommendation in its Concluding Observations:

> The Committee recommends that the State party fully implement, without delay, all recommendations issued by the Committee in its report on its inquiry (see CEDAW/C/OP.8/CAN/1, paras 216-220) and:
>
> (a) Develop a coordinated plan for overseeing the implementation of the 37 outstanding recommendations made by the Committee in its report, by

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

[173] *Ibid* at para 21.

[174] 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>.

[175] *Ibid* at para 34.

> working in cooperation, as appropriate, with the commission conducting the national inquiry, as well as with [Indigenous] women and their organizations, women's human rights organizations and the 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 with a view to:
> (i) Ensuring the use of a human rights-based approach;
> (ii)Ensuring 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) Establishing a mechanism for the independent review of cases in which 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 conduct of the inquiry and in its implementation process.[176]

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

VII. 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.[177] FAFIA

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[176] 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).

[177] 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

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.[178]

VIII. 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.[179]

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.[180] 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.

Rights, “Canadá: Asesinato mujeres indígenas” (9 December 2016), online: YouTube <https://www.youtube.com/watch?v=TkjSa7JYA30>.

[178] 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>.

[179] 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>

[180] 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>.

IX. Recommendations

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

- **Implement the recommendations of the TRC, IACHR, CEDAW and other UN bodies in relation to murdered and disappeared Indigenous women and girls that go beyond the initiation of a national inquiry, including recommendations that would most immediately affect Indigenous women and girls' daily lives, health, safety and security, address their poor socio-economic conditions, and ensure specific supports for victims of domestic violence.**
- **Ensure that through the national inquiry, or otherwise, special scrutiny is given to the vulnerability of Indigenous children in care, runaways, and homeless Indigenous women and children to racism and sexualized violence by police and other actors.**
- **Ensure that Indigenous women and their families are provided with an independent review of cases where there are questions about the adequacy or impartiality of police investigations.**
- **Ensure that through the national inquiry, or otherwise, an extensive investigation into police violence against Indigenous women and girls is undertaken, noting all filed complaints, investigations, charges, and prosecutions.**
- **Undertake, 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.**
- **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.**
- **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.**

Exclusion of Indigenous Women's Organizations from Nation to Nation Talks (Articles 2 and 5 of CERD, Articles 18, 22 and 44 of UNDRIP)

I. New Federal Government

In October 2015, a new federal government assumed power – ending a 10-year period of Conservative federal governments led by Stephen Harper. The Liberal Party of Canada is now the governing federal party under the leadership of Prime Minister Justin Trudeau. The current federal government has expressed its commitment to a new nation-to-nation relationship with Indigenous peoples.[181]

II. Canada endorses the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

On 9 May 2016, the Government of Canada announced that it fully supports UNDRIP,[182] and the Prime Minister asked the Minister of Indigenous and Northern Affairs and other Ministers to fully implement its provisions.[183] Article 18 of UNDRIP is particularly important for Indigenous women because it states that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves…"[184] Article 44 guarantees that all rights in UNDRIP are guaranteed equally to male and female Indigenous persons.

III. Indigenous Women's Organizations Excluded from Nation-to-Nation Framework

The Government of Canada has decided that, under its new nation-to-nation framework, it will engage with the three groups recognized in s. 35 of Canada's Constitution - First Nations, Inuit and Métis - and consequently it will consult on a regular basis with the three national organizations that represent these groups, the Assembly of First Nations, the Métis National Council, and the Inuit Tapirisat. The Government is also meeting with the Congress of Aboriginal

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[181] Liberal Party of Canada, "A New Nation-to-Nation Process" (2015), online: <https://www.liberal.ca/realchange/a-new-nation-to-nation-process/>.
[182] Indigenous and Northern Affairs Canada, "Statement on the United Nations Declaration on the Rights of Indigenous Peoples" (23 June 2017) online: <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958#a2>.
[183] *Ibid*.
[184] *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 art 18, (entered into force: 13 September 2007) online: <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>.

Peoples.[185] These are all male-led organizations, and their record on women's rights and women's participation is weak. Until this new nation-to-nation relationship was defined, the Government of Canada had a practice of engaging with five National Aboriginal Organizations, which included the Native Women's Association of Canada (NWAC).

The change to a nation-to-nation dialogue that only included three male-led National Aboriginal Organizations came in March 2016, when NWAC found itself, for the first time in many years, not included in talks between federal, provincial, territorial governments and Indigenous leadership.[186] Since that time, NWAC has been directly informed by the Prime Minister that it will not be included in talks that fall under the nation-to-nation framework.

On June 12, 2017, the Assembly of First Nations and the Government of Canada signed a memorandum of understanding setting out joint priorities for the nation-to-nation relationship. This memoramdum ignores women issues such a missing and murdered Indigenous women and girls, gender discrimination in the *Indian Act* and child and family services. [187]

This is a step backwards. A new nation-to-nation relationship requires supporting and fostering the equality and participation of Indigenous women. Indigenous women need to be full partners in their communities and nations and in engagements with governments.

IV. Recommendations

- **Based on Canada's domestic and international human rights obligations, and specifically Articles 18 and 44 of UNDRIP, the Government of Canada should ensure that the Native Women's Association of Canada is a full partner in the nation-to-nation framework, and take steps to invest in Indigenous women's organizations at the national, provincial, and territorial level so that they can participate in their own decision-making structures and prepare informed positions so that they can engage effectively in dialogue with governments on the issues that directly affect them.**
- **The Government of Canada should also prioritize issues impacting Indigenous women in its nation-to-nation relationship building and include in these discussions the Native Women's Association of Canada, Native women's organizations, and Indigenous women experts and advocates.**

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[185] John Tasker, "Justin Trudeau announces 3 steps to help enact Truth and Reconciliation calls to action" *CBC* (15 December 2016), online: <http://www.cbc.ca/news/politics/trudeau-indigenous-leaders-trc-1.3897902> ; Canadian Press, "Justin Trudeau meets Congress of Aboriginal Peoples to discuss concerns" (10 January 2017), online: <http://www.cbc.ca/news/politics/trudeau-congress-aboriginal-peoples-1.3929297>.

[186] Elizabeth McSheffrey, "Indigenous Leaders Shocked by Exclusion from Climate Change Meeting" *National Observer* (7 March 2016), online: <http://www.nationalobserver.com/2016/03/07/news/indigenous-leaders-shocked-exclusion-climate-change-meeting>.

[187] Memorandum of Understanding on Joint Priorities between the Assembly of First Nations and the Her Mahesty the Queen in Right of Canada, dated June 12, 2017, online <http://www.afn.ca/uploads/files/canada-afn-mou-final-eng.pdf>.

Racialized Women and Employment (Article 5)

I. CERD Committee's Concerns and Previous Recommendations

In its 2012 Concluding Observations, the CERD Committee recommended:

> (b) Intensifying efforts to remove employment-related discriminatory barriers and discrepancies in salaries between Aboriginal and non-Aboriginal people, in particular in Saskatchewan and Manitoba.[188]

II. Wage Inequality

According to a 2014, study[189] the status of racialized immigrant women in the Canadian Labour Market is as follows:

- There are 3.2 million immigrant women in Canada, 55% of them are from racialized backgrounds
- Racialized women in Canada are over-represented in low-skill, low paid labour, even with an education
- These women face the worse labour market conditions and outcomes in Canada
- They are over-represented in low-paid, low-skill jobs characterized by high risk and precarity
- These women also experience elevated rates of under/unemployment
- These gaps occur despite the fact that immigrant women, and men are more likely to be university-educated than their Canadian-born counterparts

Indigenous people face a 28 year gap in education[190] which leads to a 63 year gap in income levels[191] for Indigenous peoples generally. This gap has a prounced impact on Indigenous women, particularly considering that Indigenous women are over-represented in single parent households.[192]

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[188] UNCERD, 80th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at para 19(b).
[189] Premji et al, "Precarious Work Experiences of Racialized Immigrant Women in Toronto: A Community-Based Study" (2014) 22 Just Labour: A Canadian Journal of Work and Society 122 at 123.
[190] Office of the Auditor General of Canada, *2011 June Status Report of the Auditor General of Canada*, Office of the Auditor General of Canada, online: <4 http://www.oag-bvg.gc.ca/internet/english/parl_oag_201106_04_e_35372.html#hd5c>.
[191] Wilson & David Macdonald, "The income gap between Aboriginal peoples and the rest of Canada" The Canadian Centre or Policy Alternatives (April 2010).
[192] Vivian O'Donnell & Susan Wallace, "First Nations, Métis and Inuit Women" Statistics Canada, online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm>.

III. Pay Equity

The UNCEDAW Committee Recommended the following in its concluding observations for Canada:

> Take all measures necessary to narrow the wage gap, including by repealing the Public Sector Equitable Compensation Act, adopting legislation in the federal jurisdiction and in all provincial and territorial jurisdictions on the principle of equal pay for work of equal value and increasing the minimum wage, which many women disproportionately receive…[193]

Laws requiring employers to pay equal pay for work of equal value (pay equity) are a key workforce protection for women. Pay equity laws require not solely that employers pay the same pay for men and women performing the same work, but that they pay equal pay for work of equal value. This is essential because women who work in female dominated industries are often undervalued and under-compensated. Work that requires comparable skills, responsibility and working conditions should be compensated equally regardless of the gender of the worker.[194]

At the federal level, women have been seeking improved pay equity protection for many years. Making complaints under the pay equity provisions of the *Canadian Human Rights Act* has proven to be slow and cumbersome. A 2004 Pay Equity Task Force[195] recommended a proactive pay equity system that could also address pay inequities that are widened by race and disability. Rather than enacting proactive pay equity legislation for the federal sector as a whole, in 2009 the federal government passed regressive legislation for its own employees, the *Public Service Equitable Compensation Act (PSECA).*[196] Under the *PSECA* pay equity is to be

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[193] Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elmination of Discrimination Against Women*, UN Doc CEDAW/C/CAN/CO/8-9 (25 November 2016) at para 39, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement> .

[194] House of Commons, Standing Committee on the Status of Women, *An Analysis of the Effects of the Public Sector Equitable Compensation Act* (June 2009) at 2 (Chair: Hedy Fry), online: <http://www.parl.gc.ca/content/hoc/Committee/402/FEWO/Reports/RP4007440/402_FEWO_Rpt07/402_FEWO_Rpt07-e.pdf>.

[195] Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right* (Ottawa: Pay Equity Task Force, Minister of Justice and Attorney General of Canada, 2004) at 503, online: <http://www.collectionscanada.gc.ca/webarchives/20071121055449/http://www.justice.gc.ca/en/payeqsal/docs/petf_final_report.pdf> (also see the archived Pay Equity Task Force review website, online: <http://www.collectionscanada.gc.ca/webarchives/20071115062515/http://www.justice.gc.ca/en/payeqsal/index.html>; and a government summary of the Task Force's history, Treasury Board of Canada Secretariat, "The Public Sector Equitable Compensation Act and the Reform of Pay Equity" (5 February 2013), online: <http://www.tbs-sct.gc.ca/lrco-rtor/relations/consult/psecarpe-lerspres04-eng.asp>.

[196] *PSECA*, *Public Service Equitable Compensation Act,* SC 2009, c 2.

dealt with through collective bargaining, [197] making pay equity for women a bargaining chip – placing women union members in a contest with male members over benefits that will form part of a bargaining package – rather than a human right.

The Special Committee on Pay Equity recommended in June 2016 that the *PScCA* be repealed and be replaced with a proactive federal pay equity law.[198] Women now hope that the new federal government will take steps forward, repeal the *PSECA*, and enact proactive pay equity legislation for the whole federal sector.

The Federal Government has promised to table legislation in 2018, to require federally-regulated employers to pay men and women equally.[199] The Government will be consulting with various stakeholders and reviewing the recommendations and subsequently overhauling the highly-criticized *Public Service Equitable Compensation Act.* According to the Minister of Employment, Workforce Development and Labour, the Honourable MaryAnn Mihychuk, this legislation will be an overhaul of the current system and will move away from a complaint-based model to one that forces employers to comply by reviewing their wages and ensuring they are equal.[200]

IV. Part-time, Casual, Precarious Work

Women are less likely to hold well paid, full time jobs compared to men[201] and are also more likely to hold multiple jobs.[202] Working part-time is not necessarily women's choice, but rather is due to childcare responsibilities or an inability to find full-time work. The growth of precarious, unstable work in Canada affects those workers who are already vulnerable – women, and particularly immigrant, racialized, Indigenous women, and women with

[197] House of Commons, Standing Committee on the Status of Women, *An Analysis of the Effects of the Public Sector Equitable Compensation Act* (June 2009) at 2 (Chair: Hedy Fry), online: <http://www.parl.gc.ca/content/hoc/Committee/402/FEWO/Reports/RP4007440/402_FEWO_Rpt07/402_FEWO_Rpt07-e.pdf>.
[198] Special Committee on Pay Equity, "It's Time to Act" Report of the Special Committee on Pay Equity (Ju8ne 2016) 42nd Parliament, 1st session, online < http://ywcacanada.ca/data/research_docs/00000393.pdf >
[199] Kathryn May, "Liberals promise 'proactive' pay equity legislation to close wage gaps" Ottawa Citizen (5 October, 2016) online: <http://ottawacitizen.com/news/national/liberals-promise-proactive-pay-equity-legislation-to-close-wage-gaps>.
[200] *Ibid.*
[201] Diane Galarneau and Eric Fecteau, "The Ups and Downs of Minimum Wage" (2006) Statistics Canada, online: <http://www.statcan.gc.ca/pub/75-006-x/2014001/article/14035-eng.htm#a6>.
[202] *Ibid*.

disabilities.[203] There are few effective protections for women workers, in precarious, part-time, temporary and low-paying jobs.[204]

V. Care Givers

The UNCEDAW Committee recommended the following in its concluding observations for Canada:

> Discontinue the use of closed work permits in the Temporary Foreign Workers Program, thereby enabling women migrant domestic workers to freely change employers and thus improving their working and living conditions and reducing the risk of abuse, ensure that women migrant domestic workers who are victims of rights violations have effective access to justice, including legal aid, and take steps to facilitate access to permanent residency permits for women migrant domestic workers…[205]

In 2014, the federal Live-in Caregiver Program was eliminated and replaced with the Caregiver Program, [206] a new branch of the federal Temporary Foreign Worker Program.[207] Ninety-five percent of caregivers are women who are largely from the Philippines.[208] They continue to be vulnerable to exploitation and their precarious status has increased with the changes to the Program.

The "live-in" requirement for caregivers has been removed, but they continue to experience exploitation, [209] and face new vulnerabilities:

- Caregivers are still tied to their employers, and requirements of the program make it difficult—if not impossible—to switch employers.
- Caregivers are still expected to work as caregivers for two years within a four-year period[210] and are only allowed to work for the employer listed on their work permit.[211]

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[203] Law Commission of Ontario, *Vulnerable Workers and Precarious Work: Final Report* (2012), online: <http://www.lco-cdo.org/en/vulnerable-workers-final-report> (see section II. Identifying Vulnerable Workers and Precarious Work).
[204] Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on the Economic, Social and Cultural Rights*, UN Doc E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006) at para 49.
[205] Committee on the Elimination of Discrimination agains Women, *Concluding Observations on the combined eighth and ninth periodic reports of Canada*, UN Doc CEDAW/C/CAN/CO/8-9 (18 November 2016), at para 39.
[206] Citizenship and Immigration Canada, "Backgrounder Improving Canada's Caregiver Program" (31 October 2014), online: <http://news.gc.ca/web/article-en.do?nid=898719>.
[207] Employment and Social Development Canada, "Families Hiring In-Home Caregivers" (15 December 2015), online: <http://www.esdc.gc.ca/eng/jobs/foreign_workers/caregiver//index.shtml>.
[208] Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* (Toronto: George Cedric Metcalf Charitable Foundation, 2012) at 36.
[209] CIC, Backgrounder, *Ibid*.
[210] Debra Black, "New Rules for Federal Live-In Caregivers Program", *The Toronto Star* (28 November 2014), online: <https://www.thestar.com/news/canada/2014/11/28/new_rules_for_federal_livein_caregivers_program.html>.

- High living expenses in Canada combined with low wages[212] encourage caregivers to continue to choose the live-in option where working conditions are most exploitative, even though it is no longer mandatory.[213]
- Low-wage workers, like caregivers, face greater challenges in bringing their families to Canada; unlike high-wage workers, whose spouses are eligible for open work permits and whose children can get study permits.[214]
- All caregivers who apply for permanent residency now must have at least one year of post-secondary education.[215]

In 2016, the Federal Government announced that they would lower the cap on the amount of Caregiver Program permanent residency applications, from 30,000 per year in 2014 to 18,000.[216] In addition, there is already a significant backlog of applications to be processed, resulting in an average wait time of 49 months for a permanent residency application to be processed.[217]

In September 2016, the *Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities* released 21 recommendations to the Federal Government pertaining to the Temporary Foreign Worker Program[218], including that:

- The government get rid of employer employer-specific work permits to prevent abuse;
- Immigration, Refugees and Citizenship Canada review the current pathways to permanent residency for all temporary foreign workers, with a view to facilitating access to permanent residency for migrant workers who have integrated into Canadian society and are filling a permanent labour market need;
- Immigration, Refugees and Citizenship Canada allocate adequate resources to allow for the timely processing of permanent residency applications for those migrant workers that are hired under the Temporary Foreign Worker Program; and

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[211] Citizenship and Immigration Canada, "Extend Your Work Permit-Live-in Caregivers" (5 November 2014), online: <http://www.cic.gc.ca/english/work/caregiver/extend-stay.asp#change>.
[212] Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* (Toronto: George Cedric Metcalf Charitable Foundation, 2012) at 88.
[213] Melissa Cederqvist & Eudoxie Sallaz, "Live-in Caregivers and Intimidation in the Workplace" (November 2014) at 7, online: <https://www.mfa.gouv.qc.ca/fr/publication/Documents/2014-11-30.8-Memoire.pdf>.
[214] *Ibid*.
[215] *Ibid*.
[216] Jeremy J. Nuttall, "Liberal Immigration Changes Bad News for Caregivers, Says Advocate", The Tyee (3 November 2016), online: <https://thetyee.ca/News/2016/11/03/Liberal-Immigration-Changes-Caregivers/>.
[217] *Ibid.*
[218] House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Report: Temporary Foreign Worker Program* (September 2016) (Chair: Brian May), online <http://www.ourcommons.ca/DocumentViewer/en/42-1/HUMA/report-4/page-111>.

- Employment and Social Development Canada, in collaboration with relevant stakeholders, review current monitoring and enforcement mechanisms, with the objective of addressing gaps in employer compliance and the protection of migrant workers' rights. In addition, an effort shall be made to move away from a complaint-driven model of program enforcement.[219]

In response to the recommendations, the Federal 2017 Budget addressed the temporary foreign worker program by primarily focusing on the economic needs of the market. With respect to the safety and rights of TFWs, the government has committed to:

- Increasing on-site inspections to ensure employer compliance with the program
- Informing workers of their rights upon arrival to Canada and telling employers their rights and responsibilities
- Fostering information sharing between provinces and territories and supporting the formalization of support services and dispute resolution processes
- Continuing to collaborate with provinces and territories, foreign governments and international organizations to address labour exploitation associated with the activities of recruiters in Canada and abroad[220]

With respect to eliminating employer-specific permits, the government has refused on the basis that the permits are tied to Labour Market Impact Assessments for specific employers, despite the history of female caregivers facing exploitation at the hands of their specific employers and needing to change employers for their safety. The program is centred on employers who have conducted such an assessment and demonstrated a need for a temporary foreign worker, so employer-specific permits are a necessity. However, the Government has committed to reviewing ways to improve the safety of workers in low skill streams. The government should review this issue using a gendered based lens and in consultation with women's groups so that women caregivers can benefit from employer-specific permits, without being put at risk of exploitation.

Despite continuing demands for caregivers, the immigration system fails to accord sufficient recognition to the skills of these workers, thus preventing them from coming in under the regular admission system. The fact that caregivers come in through a special program, and as temporary foreign workers, is symptomatic of the longstanding failure of Canada's immigration selection process to appropriately value the skills and experiences of women and caregivers.

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[219] *Ibid* at 33.

[220] Government of Canada, *The path forward plan for the Temporary Foreign Worker Program and the International Mobility Program* (10 April 2017), online: <https://www.canada.ca/en/employment-social-development/services/foreign-workers/reports/plan.html>.

VI. Recommendations

The Government of Canada should:

- **Implement strategies that will address the structural inequality of women, racialized women, Indigenous women, and marginalized women, in employment in all jurisdictions, including employment equity programs, higher minimum wages and 'living wage' strategies, increased access to unionization, and enhanced resources and legal capacities for human rights institutions and law to address systemic discrimination in employment.**
- **Repeal the *Public Service Equitable Compensation Act* and replace it with a proactive federal pay equity law.**

The governments of all provinces and territories should:

- **Ensure that there is effective, proactive pay equity legislation in place in their jurisdiction that will address and correct the lower pay assigned to 'women's work' and apply to both public and private sector employers.**

Access to Justice for Indigenous and Racialized Women (Article 6)

I. CERD Committee's Concerns and Previous Recommendations

In 2012, the Committee on the Elimination of Racial Discrimination (CERD) recommended that Canada:

> Facilitate access to justice for Aboriginal women victims of gender-based violence, and investigate, prosecute and punish those responsible;[221][…] that the State party strengthen its efforts to promote and facilitate access to justice at all levels by persons belonging to minority groups, in particular by Aboriginal peoples and African Canadians. The Committee also urges the State party to establish without further delay, a mechanism to fill the gap caused by the cancellation of the Court Challenges Programs, as previously recommended by the Committee.[222]

Accordingly, signaling discrimination Indigenous women face when applying to legal aid, the CEDAW Committee recommended in 2016, that Canada:

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[221] Committee on the Elimination of Racial Discrimination. *Consideration of reports submitted by States parties under article 9 of the convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, (*4 April 2012), at para 17.
[222] *Ibid* at para. 21.

> Increase funding for civil legal aid, and specifically earmark funds for civil law legal aid in the Canada Social Transfer, in order to ensure that women have access to adequate legal aid in all jurisdictions, ***in particular*** women who are victims of violence, [***Indigenous***] ***women*** and women with disabilities...[223]

While there have been many initiatives in Canada towards a more accessible justice, the justice system continues to present several barriers for racialized women, and in certain cases, specifically for Indigenous women. Inadequate legal aid services and lack of access and inaccurate management of cases of domestic violence in which Indigenous women are involved are the major problems face by minority women in Canada.

II. Legal Aid

a. Chronic Underfunding

The Chief Justice of the Supreme Court of Canada, The Honourable Beverley McLachlin, has stated her belief that "lack of access to civil justice represents the most significant challenge to our justice system".[224]

There is a marked gender difference in legal aid usage: men are the primary users of criminal law legal aid, while women are the primary users of civil legal aid, especially for family law matters.[225] The CBA asserts that the lack of access to legal aid disproportionately affects women, people with disabilities, recent immigrants, members of racialized communities and Indigenous people.[226] The shrinking funding for civil legal aid restricts access to legal protections for women in particular.

Legal aid in Canada has never fully recovered from the cuts that occurred in the 1990s. While the Government of Canada provides a direct transfer to the provinces and territories for criminal legal aid, civil legal aid is included in the basket of programs to be paid for by provinces and territories under the Canada Social Transfer (CST).[227] As requirements on provinces and territories to spend CST money on civil legal aid were removed in 1995, expenditures have fallen drastically. Between 1995 and 2012, with a 21.2% drop in the level of per capita direct

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[223] Committee on the Elimination of Discrimination Against Women. *Concluding observations on the combined eighth and ninth periodic reports of Canada,* (25 November 2016), at para 15.
[224] Beverley McLachlin, "Foreward", in M. Trebilcock, A. Duggan, L. Sossin, eds. *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).
[225] Alison Brewin, *Legal Aid Denied: Women and the Cuts to Legal Services in BC*, Canadian Centre for Policy Alternatives, (September 2004) at 9, online: <http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC_Office_Pubs/legal_services.pdf>.
[226] *Ibid*.
[227] *Ibid*.

service expenditure on civil legal aid.[228] Similarly, between 1993 and 2012, the rate of approved applications for civil legal aid fell by 65.7%.[229]

In June, the British Columbia legal aid society announced a suspension of immigration and refugee services due to lack of funding, gravely affecting immigrant women who have been victims of violence. Angela MacDougall, Executive Director of Battered Women's Support Services in Vancouver, notes that 40% of their clients are immigrant women[230]. The 2017 Federal Budget attempts to respond to this by allocating $62.9 million over five years, starting in 2017–18, and $11.5 million per year thereafter, to enhance the delivery of immigration and refugee legal aid services. However, the budget fails to recognize the need for increased funding in civil legal aid, making no mention of it or of the need to provide such aid to racialized and minority groups and more specifically to Indigenous women. Rather, the budget focuses its access to justice initiatives in "innovative and technology solutions" and in providing services in both official languages (French and English) without any recognition to ancestral languages[231].

b. Eligibility Requirements

In 2008 and in 2016, the CEDAW Committee recommended that there be standardized minimum criteria for eligibility for legal aid.[232] But there continues to be uneven access to legal aid services across provinces and territories, as well as narrow eligibility requirements, which severely curtail women's access to assistance and representation.

Only low-income applicants receive legal aid funding. Yet, the income criterion for legal aid is often below the poverty line.[233] This denies many women access to legal aid, restricting access to only those who live in deep poverty.

Even where a woman meets the narrow poverty requirement, eligibility for family law legal aid is further restricted: in some jurisdictions family law cases will only be funded if there has been violence; in others, only cases involving children.

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[228] Currie A, *The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012,* Canadian Forum on Civil Justice (May 13, 2013), online: <http://www.cfcj-fcjc.org/a2jblog/the-state-of-civil-legal-aid-in-canada-by-the-numbers-in-2011-2012 - sthash.a29I51Pw.dpuf>.
[229] *Ibid*
[230] "B.C. Legal Aid Suspends Immigration and Refugee Services Due to Lack of Funding", *CBC News* (28 June 2017), online: <http://www.cbc.ca/news/canada/british-columbia/b-c-legal-aid-suspends-immigration-and-refugee-services-due-to-lack-of-funding-1.4181352>.
[231] Government of Canada, *Budget 2017: Chapter 3 – A Strong Canada at Home and in the World*, online: <http://www.budget.gc.ca/2017/docs/plan/chap-03-en.html#Toc477707441>.
[232] Currie A, *The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012,* Canadian Forum on Civil Justice (May 13, 2013), online: <http://www.cfcj-fcjc.org/a2jblog/the-state-of-civil-legal-aid-in-canada-by-the-numbers-in-2011-2012 - sthash.a29I51Pw.dpuf>.
[233] *Ibid*.

c. Lack of protection in cases of domestic violence where Indigenous women are affected

As noted above, multiple times, the Royal Canadian Mounted Police have failed to protect Indigenous women in situations of domestic violence, with dual charges becoming a regular practice in such cases. Indigenous women in both British Columbia and Saskatchewan have reported to Human Rights Watch that when calls are made to the police by Indigenous women and girls seeking help with violence, these are frequently met with skepticism and victim-blaming, and that police often arrest victims of abuse for actions taken in self-defense[234]. The shortcomings by police in adequately dealing with cases of domestic violence and reporting them to justice aggregated to the lack of legal aid available to racialized women, deters them from pursuing a case and diminishes their access to justice and right to a due process.

III. Recommendations

The Government of Canada should:

- **Increase funding for civil legal aid.**
- **Attach conditions to the Canada Social Transfer to ensure that all provinces and territories provide civil legal aid services that ensure women can use legal protections and rights when necessary, and obtain effective remedies when their rights are violated, in particular, women experiencing male violence, Indigenous women and women with disabilities.**
- **Ensure that provincial governments establish a special mechanism or amend already existing mechanisms to accurately address situations of domestic violence affecting Indigenous women.**

[234] 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" (2017), online: <https://www.hrw.org/news/2017/06/19/submission-government-canada-police-abuse-indigenous-women-saskatchewan-and-failures>.

Indigenous and Racialized Women in Detention (Articles 2, 5, and 7)

I. CERD Committee's Concerns and Previous Recommendations

In 2007[235] and 2012,[236] the CERD Committee expressed concerns and made recommendations regarding the disproportionately high rates of incarceration of Indigenous people, including Indigenous women.

Other UN committees, such as the Human Rights Committee, have also expressed concerns about Canada's prison system, noting the unacceptably high rates of incarcerated Indigenous women,[237] the over-crowding of detention facilities, the segregation of prisoners, lack of medical support for prisoners with mental health issues, and suicides of prisoners.[238]

Canada has failed to meaningfully implement the CERD or Human Rights Committee recommendations and has done little to address the underlying conditions related to the over-incarceration of racialized women.

II. Liberty and Security of the Person

The number of women imprisoned in Canada is increasing at an alarming rate. The overall population of women in prison increased 60% since 2003.[239] Between 2003 and 2013, the number of federally imprisoned women increased by 13.9%.[240] This is happening at a time when Canada's national crime rate is at its lowest since 1969.[241] Indigenous and other racialized women,[242] as well as women with disabling mental health issues,[243] are disproportionately incarcerated. Indigenous women are now 39% of federally sentenced women.[244]

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[235] UNCERD, 70th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/18 (2007) at para 19.
[236] UNCERD, 80th Sess, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at para 12.
[237] Human Rights Committee, *Concluding observations on the sixth periodic report of* Canada, UN Doc CCPR/C/CAN/CO/6, (13 August 2015), at para 18.
[238] *Ibid* at para 14.
[239] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx> [Office of the Correctional Investigator, *2013 Annual Report*].
[240] Public Safety Canada, *2013 Annual Report Corrections and Conditional Release Statistical Overview* (2013) at 39, online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2013/index-en.aspx>.
[241] Statistics Canada, *Police-reported crime statistics, 2013* (23 July 2014) at 1, online: StatsCan <http://www.statcan.gc.ca/daily-quotidien/140723/dq140723b-eng.pdf>.
[242] Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.
[243] Correctional Services Canada, *File #394-2-88 Evaluation Report: Intensive Intervention Strategy for Women Offenders* (March 2010) at 21-22, online: <http://www.csc-scc.gc.ca/publications/092/005007-2006-eng.pdf>.
[244] Statistics Canada, *Study: Women in Canada: Women and the Criminal Justice System* (6 June 2017) at 2, online:

The overwhelming majority of women in prison have histories of abuse and suffer from post-traumatic stress.[245] 85.7% of all incarcerated women and 91% of Indigenous incarcerated women have experienced physical and/or sexual abuse.[246] Many have never received therapeutic support; rather, they are likely to be medicated and pathologized.

Imprisoned women are more likely to be impoverished, under-educated[247] and unemployed[248] than the general public. 64.2% of federally incarcerated women are single mothers;[249] 57.1% had primary responsibility for their children before they were imprisoned;[250] and the majority of their children end up in the care of the state.

Most women are criminalized for behaviour occasioned by their attempts to negotiate poverty,[251] violent racism, and other forms of discrimination related to their marginalization and victimization.[252] So slight is the risk that women pose to public safety that this risk can and should be managed in the community.

III. Over-incarceration of Racialized Women

A recent report commissioned by Public Safety Canada revealed that the over-incarceration of Indigenous women is nothing short of a crisis.[253] Across Canada, the over-incarceration of Indigenous women is a form of systemic discrimination within Canada's justice system.[254] Increases in marginalization, victimization, criminalization and imprisonment are directly related to the systemic discrimination, poverty, violence and isolation faced by Indigenous and other racialized women.

StatsCan <http://www.statcan.gc.ca/daily-quotidien/170606/dq170606a-eng.pdf>

[245] Canadian Association of Elizabeth Fry Societies, "Long Term Effects of Abuse and Trauma" Elizabeth Fry Society Resources, online: <http://www.caefs.ca/feature/fact-sheets/> [CAEFS, "Long Term Effects of Abuse and Trauma"].

[246] *Ibid*.

[247] Correctional Service Canada, *Twenty Years Later: Revisiting the Task Force on Federally Sentenced Women*, prepared by Meredith Robeson Barrett et al (July 2010) at 49, online: <http://www.csc-scc.gc.ca/research/005008-0222-eng.shtml> [CSC, *Twenty Years Later*].

[248] *Ibid* at 51.

[249] *Ibid* at 39.

[250] *Ibid* at 41.

[251] Margaret Beare, *Women and Organized Crime,* Catalogue No PS4-106/2010EPDF, Department of Public Safety, (2010) at 10, 24, 29, online: <http://publications.gc.ca/collections/collection_2012/sp-ps/PS4-106-2010-eng.pdf>.

[252] Canadian Feminist Alliance for International Action, *Women's Inequality in Canada* (2008) at 42, online: <http://socialrightscura.ca/documents/CEDAW/FAFIACanadaCEDAW2008.pdf>.

[253] Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.

[254] Office of the Correctional Investigator, Spirit Matters: Aboriginal People and the Corrections and Conditions Release Act, Catalogue No PS104-6/2013E-PDF (October 2012) at para 79.

IV. Indigenous women prisoners represent the fastest growing prison populations in Canada. Between 2003 and 2013, their numbers increased by over 83.7%.[255]
V. In September 2007, Indigenous women were 45% of women classified as "maximum security";[256] they also account for 75% of reported incidents of self-injury.[257]
VI. The classification system used by the Correctional Service of Canada (CSC), which administers federal prisons, was designed for a predominantly white male population. Although CSC claims it has adjusted the classification system, it still fails to take into account cultural or gender specific issues.[258] Indigenous women are more likely to be classified as medium or maximum security than non-Indigenous women.[259]
VII. Prisoners of African Canadian heritage represented 2.9% of the Canadian population in 2011, yet Black women represented 9.12% of the federal prisoner population in 2011-2012.[260]
VIII. The majority of African Canadian women in federal penitentiaries are incarcerated for drug trafficking. Many of these prisoners were caught carrying drugs across international borders. All were poor, and most had been coerced or forced into trafficking under threats of violence.[261]

The over-representation of Indigenous women within the justice system in Canada is an increasing problem, and is directly related to women's inequality, marginalization and victimization, including the relative lack of economic support, housing and services, such as therapeutic and mental health services, available to women, particularly in non-urban and northern Canada.[262] Further, the lack of available community-based services results in women

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[255] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>. See also "Aboriginal Women Now Make up One-Third of Canadian Female Prison Population", *CBC News* (27 May 2015), online: <http://www.cbc.ca/news/canada/thunder-bay/aboriginal-women-now-make-up-one-third-of-canadian-female-prison-population-1.3089050>.
[256] Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.
[257] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>.
[258] Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012) at 33-34, online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.
[259] Correctional Service Canada, *Twenty years later: Revisiting The Task Force on Federally Sentenced Women*, (July 2010), online: <http://www.csc-scc.gc.ca/research/005008-0222-eng.shtml>.
[260] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>.
[261] *Ibid*.
[262] Jesse Winter, "Talking prisons and human rights", *Yukon News* (7 October 2013), online: <http://www.yukon-news.com/news/talking-prisons-and-human-rights/>.

being geographically and culturally dislocated from their families and/or communities of support, to serve prison sentences.[263]

IV. Treatment of Women Prisoners

Although the Task Force on Federally Sentenced Women,[264] the Arbour Commission,[265] the Auditor General, the Public Accounts Committee, the Correctional Investigator and the Canadian Human Rights Commission[266] have consistently concluded[267] that women prisoners pose a low risk to public safety and that they are less likely than men to return to prison on new charges, the Correctional Service of Canada (CSC) continues to use the same risk and needs assessment tools for both men and women.[268]

Women prisoners have less diverse programming, fewer choices for employment related training, and less access to services overall.[269] Sections 77 and 80 of the *Corrections and Conditional Release Act*[270] stipulate that the CSC must provide gender specific and culturally appropriate programming. However, women continue to be provided with programs and services designed for a predominately white, male prison population.[271]

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[263] Yukon, Department of Justice, "Sentencing" *Yukon Government* (6 March 2014), online: <http://www.justice.gov.yk.ca/prog/cor/sentencing.html>.
[264] Correctional Services Canada, "Creating Choices: The Report of the Task Force on Federally Sentenced Women" (April 1990), online: CSC <http://www.csc-scc.gc.ca/women/toce-eng.shtml>.
[265] Solicitor General of Canada, *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Ottawa: Public Works and Government Services Canada, 1996), online: <http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm>.
[266] Canadian Human Rights Commission, *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women* (December 2003) at 31, online: <http://www.chrc-ccdp.ca/sites/default/files/fswen.pdf>.
[267] The Société Elizabeth Fry du Québec, "Fact Sheets About Criminal Justice Criminalized & Imprisoned Women", online: <http://www.elizabethfry.qc.ca/en/fact_sheets/>.
[268] Colleen Anne Dell & Roger Boe, "Research Reports: An Examination of Aboriginal and Caucasion Women Offender Risk and Needs Factors" (2000) *Correctional Service of Canada* at "Need", online: <http://www.csc-scc.gc.ca/research/r94-eng.shtml>.
[269] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>; Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012), online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.
[270] *Corrections and Conditional Release Act*, SC 1992, c 20.
[271] Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012), online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.

V. Male Prison Staff

In its 2006 Concluding Observations, after reviewing Canada's fifth report, the United Nations Human Rights Committee recommended: "The State party should put an end to the practice of employing male staff working in direct contact with women in women's institutions."[272]

The Government of Canada continues to employ male front line staff in its prisons.[273] Despite the reality that 91% of federally imprisoned Indigenous women and the overwhelming majority of all federally sentenced women have histories of physical and/or sexual abuse,[274] since 1995, CSC has employed men as front line workers. In addition, many of the men are inadequately trained and have not been screened to work with women.[275] Women prisoners regularly complain of inappropriate comments and even sexual harassment and assault by male staff, but refuse to file formal complaints against staff for fear of retaliation.[276]

VI. Segregation (Solitary Confinement)

In 2006, the Human Rights Committee requested that Canada provide information "regarding the establishment of an independent external redress body for federally sentenced prisoners and independent adjudication for decisions related to involuntary segregation, or alternative models."[277] In 2015, the Human Rights Committee recommended that Canada "effectively limit the use of administrative or disciplinary segregation as a measure of last resort and for as short a time as possible and avoid such confinement for inmates with serious mental illness".[278] The Government of Canada has not developed an external redress body,[279] and women in Canadian prisons continue to be disproportionately segregated. The 1996 Arbour Commission

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[272] Human Rights Committee, *Concluding Observations of the Human Rights Committee* (2006) UN doc CCPR/C/CAN/CO/5 at para 18 [Human Rights Committee, *2006 Concluding* Observations].
[273] CSC, *Twenty Years Later, supra* note 99 at 20; see Committee on the Elimination of Discrimination against Women, Combined eighth and ninth periodic reports of States parties due in 2014, Canada, UN Doc CEDAW/C/CAN/8-9 (13 April 2015) at paras 236-244.
[274] CAEFS, "Long Term Effects of Abuse and Trauma", *supra* note 97.
[275] CSC, *Twenty Years Later, supra* note 99 at 60-1; Correctional Services Canada, *The Cross Gender Monitoring Project 3rd and Final Annual Report*, 2013, online: CSC <http://www.csc-scc.gc.ca/publications/fsw/gender3/cg-22-eng.shtml>.
[276] *Ibid*.
[277] Human Rights Committee, *Concluding observations of the Human Rights Committee:* Canada, UN Doc CCPR/C/CAN/CO/5, (20 April 2006), at para 18.
[278] Human Rights Committee, *Concluding observations on the sixth periodic report of* Canada, UN Doc CCPR/C/CAN/CO/6, (13 August 2015), at para 14.
[279] Correctional Services Canada, "Response to the Coroner's Inquest Touching the Death of Ashley Smith", December 2014 at 3.2-3, online: CSC <http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1> (where the Government affirms its current law and policy surrounding segregation) [CSC, "Response to the Coroner's Inquest"].

documented how women are affected by the isolation of segregation.[280] Segregation aggravates and/or creates mental health issues,[281] reduces motivation and opportunities to participate in reintegration activities,[282] and has been defined as an act of torture by the United Nations.[283]

- Segregation is a status and a place. Women who are segregated from the general prison population are subjected to overly restrictive conditions of confinement, including being placed in segregation and being isolated for 18+ hours a day and may have no human interaction other than with correctional staff, when they are physically restrained, or when they are being counted, or when food or medication are passed through a slot in the door.[284]
- In 2012-2013, there were 390 women in involuntary segregation.[285] 18.2% of the women stayed in segregation for longer than 30 days.[286]
- Indigenous women are more likely to be involuntarily segregated and are held in segregation for longer periods that non-Indigenous women.[287]
- It is typical for the reactions of women who are held in segregation to result in additional criminal charges and therefore longer sentences.[288]

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[280] Jena McGill, "An Institutional Suicide Machine Discrimination Against Federally Sentenced Aboriginal Women by the Correctional Service of Canada in Violation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women" (2008) 2:1 *Race/Ethnicity: Multidisciplinary Global Contexts* 89.
[281] Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", *Public Safety Canada* (2012), online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/mrgnlzd/index-en.aspx>.
[282] *Ibid*.
[283] "Solitary confinement should be banned in most cases, UN expert says", *UN News Centre* (18 October 2011), online: <http://www.un.org/apps/news/story.asp?NewsID=40097#.VwdnYuchxpk>.
[284] Kim Pate, "Why are women and girls Canada's fastest growing prison population; and, why should you care?" (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf> [Kim Pate, "Why are women and girls Canada's"]; British Columbia Civil Liberties Association, "Solitary Confinement Backgrounder" (January 2015), online: <https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>.
[285] Public Safety Canada, *2013 Annual Report Corrections and Conditional Release Statistical Overview* (2013) at 65, online: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2013/index-en.aspx>.
[286] *Ibid*.
[287] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers (28 June 2013), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>; Correctional Services Canada, *Profile of Women in Segregation*, (December 2013), online: CSC <http://www.csc-scc.gc.ca/research/005008-r320-eng.shtml>.
[288] Correctional Services Canada, "Response to the Coroner's Inquest Touching the Death of Ashley Smith", December 2014, online: CSC <http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1>;
Kim Pate, "Why are Women and Girls Canada's Fastest Growing Prison Population; And, Why Should You Care?" (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf>

- The Canadian Medical Association and the UN Special Rapporteur on torture have labeled solitary confinement "cruel and unusual punishment," and the Special Rapporteur has called for an absolute ban on solitary confinement for youth and those with mental health issues.[289]
- The jury at the inquest into the death of Ashley Smith recommended that prisoners with mental health issues never be placed in segregation.[290]
- Since that time, the Honourable Louise Arbour, the Canadian Association of Elizabeth Fry Societies, and the Canadian and Ontario Human Rights Commissions have recommended an end to the use of solitary confinement and related forms of isolation, whether lableed as 'segregation', 'intensive psychiatric care', 'medical observation' or other euphemisms used to label the segregation and isolation of women prisoners, particularly Indigenous women and those with disabling mental health issues.[291]
- Since attention has been placed on the particular treatment of women, the Correctional Service of Canada has vastly reduced its use[292] and CAEFS has offered to work with CSC to eliminate its use entirely.
- Between 2011 and 2014 nearly half of suicides in federal prisons occurred in segregation cells. Most prisoners who have died in segregation had a documented history of mental health problems. Yet, few, if any, had access to therapeutic intervention.[293]

Given the profound and disproportionate impact of segregation on Indigenous women and women with mental health issues, the use of solitary confinement and segregation/separation of women prisoners must end. Placing limits on the duration of time that a woman may be

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; Marion Botsford Fraser, "Life on the Instalment Plan", *The Walrus* (March 2010), online: <http://thewalrus.ca/life-on-the-instalment-plan/>.

[289] Kim Pate, "Why are Women and Girls Canada's Fastest Growing Prison Population; And, Why Should You Care?" (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011), online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf; British Columbia Civil Liberties Association, "Solitary Confinement Backgrounder" (January 2015), online: <https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>.

[290] Correctional Services Canada, "Response to the Coroner's Inquest Touching the Death of Ashley Smith", December 2014, online: CSC <http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1>.

[291] Louise Arbour took this position at the 2016 CAEFS Conference -- *The A Word: Reclaiming Advocacy*.

[292] At the end of fiscal year 2015-16, CSC reported there were 434 individuals in administrative segregation. Of these, 422 were men and 12 were women.

[293] Kim Pate, "Why are Women and Girls Canada's Fastest Growing Prison Population; And, Why Should You Care?" (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf; British Columbia Civil Liberties Association, "Solitary Confinement Backgrounder" (January 2015), online: <https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>.

placed in segregation is not enough. As the most recently proposed legislative response[294] and history reveal, such limits have only proven to be arbitrary and do little to protect those who are most vulnerable.

VII. Imprisoned Women with Mental Health Issues

Cuts to health and social services, including social housing, have contributed to the increasing numbers of women with disabling mental health issues in prisons and detention centres. The lack of services for women in the community contributes to the burgeoning population of women in prison, particularly Indigenous women, poor women and those with disabling mental health issues and intellectual disabilities. In what has been dubbed a "revolving door"[295] syndrome, there is ample evidence that homeless women with mental health issues are more likely to be imprisoned, and if released find it almost impossible to find housing, so too often find themselves re-incarcerated.[296]

In its 2006 Concluding Observations, after reviewing Canada's fifth report, the United Nations Human Rights Committee recommended that:

> The State party, including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.[297]

In its 2015 Concluding Observations, the Human Rights Committee noted its concern about the "insufficient medical support to detainees with serious mental illness" and called on Canada to take appropriate measures to "effectively improve access to, and capacity of, treatment centres for prisoners with mental health issues at all levels."[298]

This is a double-faceted problem: women with mental health issues are at particular risk of being imprisoned and, inside prisons, they do not receive treatment or appropriate care.

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[294] Bill C-56, *An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act,* 1st sess, 42nd Parl*,* 2017 First Reading, online: <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-56/first-reading>.

[295] Stephen Gaetz & Bill O'Grady, "Homelessness, Incarceration, and the Challenge of Effective Discharge Planning: A Canadian Case" in J. David Hulchani et al, eds, Finding Home Policy Option for Addressing Homelessness in Canada (e-book, Toronto: Cities Centre University of Toronto 2009) at 2, online: <http://www.samhsa.gov/homelessness-programs-resources > [Gaetz et al, Homelessness, Incarceration].

[296] Elizabeth Fry Toronto, *Housing Needs Assessment Facilitating Access to Housing for Criminalized Women in Toronto*, prepared by Snmanagement (April 2014), online: <http://www.efrytoronto.org/userfiles/files/efry_Housing%20Needs%20Assessment_WEB.pdf>.

[297] Human Rights Committee, *2006 Concluding observations, supra* note 124 at para 17.

[298] HRC 2015 Concluding Observations, *supra* note 89 at para 14.

- Federally sentenced women are twice as likely as men to have a mental health disorder upon being admitted to prison;[299] and in 2012/2013 approximately 75% of women prisoners received a CSC-based mental health service.[300]
- The Office of the Correctional Investigator (OCI) has assessed that CSC cannot adequately deal with mental health issues, especially when it comes to federally sentenced women. The OCI found that CSC has an over reliance on force, physical restraints, restriction on movement, limitations on interaction with other prisoners, and limitations on access to transfers to appropriate psychiatric or mental health resources.[301]
- There are significantly fewer transition options for women released from prisons, particularly those with mental health issues. [302]

In the November 2015 mandate letter to the Minister of Public Safety, Prime Minister Trudeau recognized the need to improve services for incarcerated people with mental health issues. The Prime Minister called on the Minister to "address gaps in services to Indigenous Peoples and those with mental illness throughout the criminal justice system."[303]

No action has been taken on this yet. Worse still, existing provisions, such as sections 29, 77, 80, 81 an 84 of the *Corrections and Conditional Release Act,* which provide for transfers out of prisons to mental health, women's and Indigenous resources and communities respectively, remain unavailable due to excessively restrictive corrections policies and practices.

VIII. Conclusion

Many women and girl prisoners in Canada are unnecessarily imprisoned as they pose no threat to public safety and would be better dealt with in and by the community. This is particularly true for Indigenous women, who are disproportionately incarcerated and often imprisoned far from their home communities.

Women who are incarcerated in Canada are often over classified, face inhumane segregation, and lack mental health supports and access to programming. Canada has not made significant improvements to the living conditions of prisons for women and the number of imprisoned women and girls is increasing, despite their low risk to society.

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[299] Correctional Services Canada, *File #394-2-88 Evaluation Report: Intensive Intervention Strategy for Women Offenders* (March 2011) at 21-2, online: CSC <http://www.csc-scc.gc.ca/publications/092/005007-2006-eng.pdf>.
[300] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2013-2014*, prepared by Howard Sapers (27 June 2014), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20132014-eng.aspx#sV>.
[301] Office of the Correctional Investigator*, 2013 Annual Report, supra* note 93.
[302] Gaetz et al, "Homelessness, Incarceration", *supra* note 295.
[303] Prime Minister of Canada, "Minister of Public Safety and Emergency Preparedness Mandate Letter" (13 November 2015), online: <http://pm.gc.ca/eng/minister-public-safety-and-emergency-preparedness-mandate-letter>.

Research accumulated in the last 50 years shows that the most beneficial and cost-effective way to deal with preventing victimization and criminalization is to remedy social, racial, gender and economic marginalization and promote social determinants of health.

IX. Recommendations

The Government of Canada should:

- **Restrict the use of imprisonment for women and develop new protocols to decarcerate women, particularly Indigenous women and those with disabling mental health issues.**
- **Increase income security, health and educational measures such as income assistance, adequate housing, and community supports for women with mental health issues to address the reality that women are being criminalized and incarcerated because of poverty, previous abuse, social disadvantage, racialization, and disabling mental health and intellectual capacity issues.**
- **Put an end to the practice of employing male staff working in front-line contact with women in prisons for women.**
- **Establish an independent judicial oversight as the external redress for federally sentenced prisoners.**
- **Put an end to the practice of placing women prisoners in segregation or solitary confinement.**