



NATIVE WOMEN'S  
ASSOCIATION OF CANADA

L'ASSOCIATION DES FEMMES  
AUTOCHTONES DU CANADA

**FAFIA-AFAI**

Feminist Alliance for  
International Action

L'Alliance Féministe pour  
l'Action Internationale

**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**

Submitted June 2015 by  
Canadian Feminist Alliance for International Action (FAFIA)  
and  
Native Women's Association of Canada (NWAC)

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## I. INTERNATIONAL HUMAN RIGHTS REPORTING: RECOMMENDATIONS BY UNITED NATIONS HUMAN RIGHTS EXPERT MECHANISMS

### a. HUMAN RIGHTS COMMITTEE

The Committee commented on violence against Aboriginal women and girls in 2006, stating its concern that Aboriginal women are more likely to experience a violent death than other Canadian women.<sup>1</sup> The Committee specifically highlighted the “lack of precise and updated statistical data on violence against Aboriginal women”, observed that the root causes of the violence include the social and economic marginalization of Aboriginal women, and noted “the reported failure of police forces to recognize and respond adequately to the specific threats” of violence.<sup>2</sup>

The Committee recommended to Canada in 2006:

The State party should gather accurate statistical data throughout the country on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system. The State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations.<sup>3</sup>

### b. SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

UN Special Rapporteur on the rights of indigenous peoples, James Anaya, asked Canada in 2011 to inform him of actions taken to effectively address the situation of violence against Aboriginal women and girls.<sup>4</sup>

James Anaya conducted an investigation on the situation of indigenous peoples in Canada in October 2013.<sup>5</sup> The Rapporteur's 2014 report to the Human Rights Council recognizes federal and provincial measures taken to address violence against Aboriginal women and girls, yet also highlights the:

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1 Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant Concluding observations of the Human Rights Committee*, CCPR/C/CAN/CO/5, 20 April 2006, at para 23, online: OHCHR <<http://www.ohchr.org>> [Human Rights Committee, 2006 *Concluding observations*].

2 *Ibid.*

3 *Ibid.*

4 Human Rights Council, Communications reports of special procedures, Communications sent, 1 June 2011 to 30 November 2011; Replies received, 1 August 2011 to 31 January 2012, A/HRC/C/19/44 (23 February 2012), at 89, online: OHCHR <<http://www.ohchr.org/Documents/HRBodies/SP/A.HRC.19.44.EFOnly.pdf>>.

5 Human Rights Council, *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, 7 May 2014, at para 1, online: OHCHR <<http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>> [Human Rights Council, *Report of the Special Rapporteur*].

consistent, insistent calls across the Canada for a comprehensive, nationwide inquiry, organized in consultation with indigenous peoples, that could provide an opportunity for the voices of the victims' families to be heard, deepen understanding of the magnitude and systemic dimensions of the issue, and identify best practices that could lead to an adequately coordinated response.<sup>6</sup>

Anaya formally added his voice to the call for a national inquiry.<sup>7</sup> In his report, he recommended that the federal government “undertake a comprehensive, nation-wide inquiry into the issue of missing and murdered aboriginal women and girls, organized in consultation with indigenous peoples.”<sup>8</sup>

This 2014 recommendation from the Special Rapporteur echoes one made ten years earlier by the Special Rapporteur at that time, Rodolfo Stavenhagen, following his visit to Canada. Stavenhagen urged in his mission report “that particular attention be paid by specialized institutions to the abuse and violence of Aboriginal women and girls, particularly in the urban environment.”<sup>9</sup> The current Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, has added her voice to the call for a national inquiry.<sup>10</sup> In May 2015, Tauli-Corpuz characterized Canada's response as “not enough” and “not an adequate response”.<sup>11</sup>

Domestic advocates have also engaged other special procedures of the Human Rights Council, including the Special Rapporteur on Violence against Women.<sup>12</sup> The murders and disappearances of Aboriginal women in Canada were addressed in Rashida Manjoo's 2012 report to the Human Rights Council on gender-motivated killings; she noted that indigenous women experience the intersection of racial discrimination and violence against women.<sup>13</sup>

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6 *Ibid* at para 37.

7 Susana Mas, “UN aboriginal envoy says Canada is facing a 'crisis'”, *CBC News* (15 October 2013), online: <<http://www.cbc.ca/news/politics/un-aboriginal-envoy-says-canada-is-facing-a-crisis-1.2054682>>.

8 Human Rights Council, *Report of the Special Rapporteur supra* note 5 at para 89.

9 Commission on Human Rights, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Addendum, Mission to Canada*, UN Doc E/CN.4/2005/88/Add.3 (2 December 2004), at para 113, online: OHCHR <[www.ohchr.org](http://www.ohchr.org)>.

10 Tom McCarthy, “Canada has failed to protect indigenous women from violence, says UN official”, *The Guardian* (12 May 2015), online: <<http://www.theguardian.com/world/2015/may/12/canada-violence-indigenous-first-nations-women>>.

11 *Ibid*.

12 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc A/HRC/20/16, 23 May 2012, at paras 65, 92, online: OHCHR <[http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16\\_En.pdf](http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf)>.

13 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc A/HRC/20/16/Add.4, 16 May 2012, at para 21, online: OHCHR <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add4\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add4_en.pdf)>.

### c. OTHER UN TREATY REVIEW BODIES

The Committees against Torture,<sup>14</sup> on the Elimination of Racial Discrimination<sup>15</sup> and on the Rights of the Child<sup>16</sup> made recommendations in their most recent concluding observations of Canada regarding the situation of violence against Aboriginal women and girls.<sup>17</sup> These treaty bodies called on Canada to improve its response to violence against Aboriginal women and girls; and develop a coordinated, comprehensive national plan to respond to the violence in cooperation with Aboriginal organizations.

### d. UNIVERSAL PERIODIC REVIEW

In Canada's first Universal Periodic Review in 2009, recommendations were made on the subject of violence against Aboriginal women and girls.<sup>18</sup> At the second review of Canada in 2013,<sup>19</sup> the Human Rights Council Working Group made the following recommendations:

- develop a national action plan by 2015 to respond to violence against women that includes Aboriginal perspectives, to align with the recommendations of the UN Secretary-General's campaign to end violence against women, *UNiTE to end violence against women*,<sup>20</sup>
- adopt a national action plan to respond to violence against Aboriginal women and girls;<sup>21</sup>

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14 Committee against Torture, *Concluding observations of the Committee against Torture, Canada*, UN Doc CAT/C/CAN/CO/6, 25 June 2012, at para 20, online: OHCHR <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/6&Lang=En)>.

15 Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Canada*, UN Doc CERD/C/CAN/CO/19-20, 4 April 2012, at para 17, online: OHCHR <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/19-20&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/19-20&Lang=En)>.

16 Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September-5 October 2012)*, UN Doc CRC/C/CAN/CO/3-4, 6 December 2012, at para 47(b), online: OHCHR <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CR/C/CAN/CO/3-4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR/C/CAN/CO/3-4&Lang=En)>; also see Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, A/HRC/WG.6/16/CAN/2, 7 February 2013, at para 34, online: OHCHR <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession16.aspx>>.

17 See also Canadian Feminist Alliance for International Action, Native Women's Association of Canada & Miami Law Human Rights Clinic, "Request for Thematic Hearing during the 14<sup>th</sup> Period of Sessions March 19-30, 2012" (17 January 2012), online: FAFIA <<http://www.fafia-afai.org/wp-content/uploads/2014/09/1-IACHR-Final-Request-Thematic-Hrg-Canada-Aboriginal-Women-Girls.pdf>>.

18 Human Rights Council, *Report of the Working Group on the Universal Periodic Review Canada*, A/HRC/11/17, 5 October 2009, at paras 86.27, 86.33-6, online: OHCHR <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession4.aspx>>.

19 Human Rights Council, *Report of the Working Group on the Universal Periodic Review Canada*, A/HRC/24/11, 28 June 2013, online: OHCHR <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession16.aspx>>.

20 *Ibid* at para 128.100.

21 *Ibid* at paras 128.58, 128.96, 128.97, 128.99, 128.104.

- undertake an independent national inquiry into missing Aboriginal women;<sup>22</sup>
- undertake an independent investigation into the murders and disappearances of Aboriginal women and girls in Canada with the Special Procedures of the Human Rights Council;<sup>23</sup>
- adopt federal and provincial/territorial policy and services, such as gender and race disaggregated data collection,<sup>24</sup> to respond to discrimination<sup>25</sup> and violence, including its root causes, against Aboriginal women and girls;<sup>26</sup>
- include Aboriginal peoples, particularly Aboriginal women and Aboriginal women's organizations, in developing, implementing and enforcing more effective means to combat violence against Aboriginal women and girls;<sup>27</sup> and
- continue to combat all forms of violence against women and girls.<sup>28</sup>

Thirty-two States made recommendations to Canada on the situation of violence against women, the majority of which specifically called on Canada to address violence against Aboriginal women and girls.

#### e. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

In 2008, in its Concluding Observations, the Committee on the Elimination of Discrimination against Women urged Canada to “examine the reason for the failure to investigate the cases of missing or murdered [A]boriginal women and to take the necessary steps to remedy the deficiencies in the system.”<sup>29</sup> This was a priority recommendation and Canada was asked to report back in one year.

In winter 2010, Canada submitted follow-up information to the Committee on its actions to respond to violence against Aboriginal women and girls.<sup>30</sup> In summer 2010, the Committee requested further information from Canada on its response to the issue.<sup>31</sup> In the

22 *Ibid* at para 128.104.

23 *Ibid* at para 128.101.

24 *Ibid* at para 128.105.

25 *Ibid* at paras 128.84, 128.85, 128.86, 128.87, 128.88, 128.89, 128.91, 128.92, 128.93, 128.94, 128.95, 128.102, 128.103.

26 *Ibid* at paras 128.94, 128.97, 128.98, 128.102.

27 *Ibid* at paras 128.90, 128.99.

28 *Ibid* at paras 128.81, 128.82, 128.83, 128.98.

29 Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women Canada*, UN Doc CEDAW/C/CAN/CO/7, 7 November 2009, at para 32, online: OHCHR <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCAN%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCAN%2fCO%2f7&Lang=en)> (also see paras 31, 44) [CEDAW, *Concluding observations*].

30 Committee on the Elimination of Discrimination against Women, Information provided in follow-up to the concluding observations of the Committee, Canada, *Response by Canada to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh periodic report of Canada on 22 October 2008*, UN Doc CEDAW/C/CAN/CO/7/Add.1, 9 February 2010, online: ONCHR <<http://uhri.ohchr.org/document/index/d723e578-3354-40f2-b657-d3852aee964b?from=ru>> [CEDAW, *Information provided in follow-up*].

31 Committee on the Elimination of Discrimination against Women, *Letter to Canada*, UN Doc HDI/follow-up/42/CAN/46, 25 August 2010, online: OHCHR <[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT\\_CEDAW\\_FUL\\_CAN\\_11939\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_FUL_CAN_11939_E.pdf)>.

communication, the Committee noted that it “considers that its recommendation [regarding missing and murdered Aboriginal women and girls at para 32 of its 2008 Concluding observations] had not been implemented” and:

reiterate[d] its grave concern with respect to the situation of missing and murdered Aboriginal women, the failure of the police to protect these women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered, and the lack of punishment of perpetrators.<sup>32</sup>

In 2011, the Committee wrote to Canada again regarding its “serious concern” about the situation of violence against Aboriginal women.<sup>33</sup> In this period, Amnesty International,<sup>34</sup> FAFIA<sup>35</sup> and the BC CEDAW Group,<sup>36</sup> provided follow-up submissions to the Committee, reporting Canada's continued failure to improve its response to the situation of violence against Aboriginal women and girls.

In 2011 FAFIA and the Native Women's Association of Canada (NWAC) asked the CEDAW Committee to initiate an inquiry,<sup>37</sup> under Article 8 of the Optional Protocol<sup>38</sup> to the *Convention*, into the crisis of murders and disappearances of indigenous women and girls. In April 2013, Canada eventually granted permission for CEDAW representatives to visit Canada to pursue their inquiry. In March 2015, the Committee released its groundbreaking report.<sup>39</sup>

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32 *Ibid.*

33 Committee on the Elimination of Discrimination against Women, *Letter to Canada*, UN Doc AA/follow-up/42/CAN/48, 10 February 2011, online: OHCHR <[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT\\_CEDAW\\_FUL\\_CAN\\_11938\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_FUL_CAN_11938_E.pdf)> (see CEDAW, *Concluding observations supra* note 29 at para 32, the priority recommendation).

34 Amnesty International, *Canada Follow Up to the Concluding Observations of the United Nations Committee on the Elimination of Discrimination against Women* (London: Amnesty International Publications, 2009), online: OHCHR <[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT\\_CEDAW\\_NGS\\_CAN\\_11940\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGS_CAN_11940_E.pdf)>.

35 Canadian Feminist Alliance for International Action, *No Action: No Progress Report on Canada's Progress in Implementing Priority Recommendations made by the United Nations Committee on the Elimination of Discrimination against Women in 2008* (Ottawa: FAFIA, 2010), online: OHCHR <[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT\\_CEDAW\\_NGS\\_CAN\\_13431\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGS_CAN_13431_E.pdf)>.

36 BC CEDAW Group, *nothing to report A Report on Progress in Implementing Priority Recommendations made by the Committee in its 2008 Concluding Observations on Canada* (Vancouver: Poverty and Human Rights Centre, 2010), online: OHCHR <[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT\\_CEDAW\\_NGS\\_CAN\\_11941\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGS_CAN_11941_E.pdf)>.

37 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc A/RES/54/4, 15 October 1999 (entered into force 22 December 2000, accession by Canada 18 October 2002).

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

39 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: OHCHR <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>> (see

The CEDAW Committee concluded that Canada's on-going failures to act effectively and in a co-ordinated way to address the situation of violence against Aboriginal women and girls constitute “grave violations” of their human rights, contravening Articles 1, 2(c), (d), and (e), 3, 5(a), 14(1) and 15(1)—the core equality guarantees—of the *Convention on the Elimination of All Forms of Discrimination against Women*.<sup>40</sup> This finding is unprecedented for Canada, a country that considers itself a champion of women’s human rights and substantive equality in law and practice. In its response, Canada rejects the finding that there is a grave violation of *Convention* rights, and reasserts, in effect, that what it is already doing is enough.<sup>41</sup>

The Committee's decision is highly important for Canada.<sup>42</sup> It demonstrates the indivisibility of economic, social, political and civil rights in the lives of women through its analysis of this crisis.<sup>43</sup> It also focuses on grave, intersectional and systemic discrimination<sup>44</sup>—considering Aboriginal women and girls as a group, and recognizing that the root causes of the violence lie in Canada's colonial history, including the dispossession of lands, the residential school policy, the historical and ongoing sex discrimination in the *Indian Act*; and social and economic marginalization.

The Committee’s decision also finds that it is Canada’s failures to act, to take effective steps to make women equal beneficiaries of legal guarantees, protections, services and programs, that constitute discrimination and violate the *Convention*.<sup>45</sup>

The decision identifies significant and on-going failures on the part of Canada:

- the protracted failure of the State party to take effective measures to protect Aboriginal women;<sup>46</sup>
- the failure of the established legislative and institutional legal framework to provide effective protections and remedies;<sup>47</sup>
- the failure to take adequate steps to address the stereotyping of Aboriginal women and

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paras 13-20 for background on the inquiry procedure) [CEDAW, *Article 8 Inquiry*].

40 *Ibid* at para 214-5; see also Canadian Feminist Alliance for International Action & Native Women's Association of Canada, Press Release, “Canada Commits 'Grave Violation' of Rights of Aboriginal Women and Girls: United Nations Committee on the Elimination of Discrimination against Women Releases Report on Inquiry” (6 March 2015), online: FAFIA <[http://www.fafia-afai.org/wp-content/uploads/2015/03/ENG\\_CEDAW-Press-Release\\_FINAL.pdf](http://www.fafia-afai.org/wp-content/uploads/2015/03/ENG_CEDAW-Press-Release_FINAL.pdf)>.

41 Committee on the Elimination of Discrimination against Women, *Observations of the Government of Canada on the 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/2, online: OHCHR <[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW\\_C\\_OP-8\\_CAN\\_2\\_7644\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_2_7644_E.pdf)>.

42 See Shelagh Day, “Canada Violates the Rights of Aboriginal Women and Girls” (9 March 2015), *Blogging for Equality* (blog), online: <<http://www.bloggingforequality.ca/2015/03/cedaw-report-on-missing-and-murdered.html>>.

43 CEDAW, *Article 8 Inquiry supra* note 39 (see paras 199, 203).

44 *Ibid* (see para 204).

45 *Ibid* (see para 214).

46 *Ibid* at paras 207-8, 210, 214 (also see section C(3) and (4)).

47 *Ibid* at para 210.

girls, including the stereotyping of them as prostitutes, transient or runaways and having high-risk lifestyles, and an indifferent attitude towards reports of missing Aboriginal women;<sup>48</sup>

- the failure to take into account the increased vulnerability of Aboriginal women because of discrimination based on both sex and race;<sup>49</sup>
- the failure to take into account the particular problems of Aboriginal women living in remote communities;<sup>50</sup>
- the failure to provide sufficient coordination between the different jurisdictions and institutions of the State;<sup>51</sup> and
- the failure to ensure the realization of economic, social, political and cultural rights of Aboriginal women – this includes education, housing, transportation options, support to families and children and adequate living conditions on and off reserve – necessary to permit women to escape violence.<sup>52</sup>

Following an extensive examination of evidence, the Committee issued 38 comprehensive recommendations that cover issues including:<sup>53</sup>

- mandatory protocols for missing women investigations and reporting;
- monitoring mechanisms for these protocols;
- support services for families;
- reliable systems for data collection;
- mechanisms for inter-jurisdictional and inter-agency coordination of police response;
- independent police oversight bodies;
- access to justice, including sufficient funding for legal aid;
- appropriate victim services;
- measures to address stereotyping;
- measures to address over-criminalization;
- assistance for women exiting prostitution;
- measures to account for connections between systemic violence and human trafficking;
- measures to improve socio-economic conditions of women and girls, including national anti-poverty, food security, housing, education and employment strategies;
- measures to overcome the legacy of colonization, including amending the *Indian Act* to remove continuing sex discrimination;
- establishment of a national public inquiry – fully independent and transparent – that can develop a national action plan and a coordinated mechanism for overseeing it, along with sufficient resources for effective implementation.

The Committee called for its recommendations to be implemented as a comprehensive whole, not in a piecemeal fashion.

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48 *Ibid* at para 205.

49 *Ibid* at para 204.

50 *Ibid*.

51 *Ibid* at para 203 (see also paras 148-50, 158-9).

52 *Ibid*.

53 *Ibid* at para 216.

The findings and recommendations of the CEDAW Committee reinforce those of the Inter-American Commission on Human Rights.

## II. REGIONAL HUMAN RIGHTS REPORTING: RECOMMENDATIONS BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

In 2012<sup>54</sup> and 2013,<sup>55</sup> FAFIA and NWAC requested and participated in thematic briefings before the Inter-American Commission on Human Rights (IACHR) on the subject of violence against Aboriginal women and girls in British Columbia and Canada. Following these hearings, an IACHR delegation was permitted to visit Canada to investigate the situation of violence in British Columbia in summer 2013.<sup>56</sup>

Only a couple months before the CEDAW report was released, in January 2015, the IACHR released a similarly groundbreaking report.<sup>57</sup> The IACHR report has four key conclusions:<sup>58</sup>

- Canada is legally required to fully and effectively improve its response to the crisis of violence against Aboriginal women and girls pursuant to its obligations under the *Charter of the Organization of American States* and the *American Declaration of the Rights and Duties of Man*;<sup>59</sup>
- The root causes of violence against Indigenous women stem from a history of discrimination beginning with colonization and continuing through laws and policies today, including the *Indian Act*<sup>60</sup> sex discrimination and the legacy of residential schools,<sup>61</sup> which laid the foundation for Aboriginal women's higher likelihood of economic marginalization, social dislocation and psychological trauma;
- Both federal and provincial governments have responsibility under the law to act effectively<sup>62</sup>, and Canada must undertake a coordinated, national response to the violence,<sup>63</sup> including a national coordinated strategy to address Aboriginal women's social and economic marginalization; and

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54 *Missing and Murdered Indigenous Women in British Columbia, Canada*, Inter-Am Ct HR OEA/Ser.L/V/II. Doc.30/14, (21 December 2014), at para 3, online: OAS <<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>> [IACHR, *Missing and Murdered Indigenous Women*].

55 *Ibid* at para 5.

56 *Ibid* at paras 4-6.

57 *Ibid*.

58 See also Canadian Feminist Alliance for International Action & Native Women's Association of Canada, Press Release, "Murders and disappearances of Indigenous women caused by inequality, marginalization – Canada must act to prevent violence: Inter-American Commission on Human Rights" (12 January 2015), online: CNW <<http://www.newswire.ca/en/story/1470923/murders-and-disappearances-of-indigenous-women-caused-by-inequality-marginalization-canada-must-act-to-prevent-violence-inter-american-commission-on-h>>; and the "Missing and Murdered Indigenous Women and Girls in British Columbia" section of the BC CEDAW Group Submission to the Human Rights Committee on the occasion of Canada's sixth periodic review.

59 *IACHR, Missing and Murdered Indigenous Women supra* note 54 at paras 106-7.

60 *Ibid* at paras 67-72.

61 *Ibid* at paras 73-6.

62 *Ibid* at para 157.

63 *Ibid* at paras 13, 302, 307.

- A national action plan or national inquiry is the much-needed response that can effectively engage all levels of government, affected communities and other stakeholders in a coordinated way.<sup>64</sup>

United Nations expert bodies, special rapporteurs, as well as the Human Rights Council through the Universal Periodic Review process, have urged Canada to address the human rights crisis of violence against Aboriginal women and girls since 2006. The 2015 IACHR and CEDAW reports provide comprehensive, detailed examinations by human rights expert bodies of the nature of the violence and the adequacy of government response.

The IACHR and CEDAW reports reinforce and expand on the recommendation of the Human Rights Committee made almost a decade ago.<sup>65</sup> They also add to the hundreds of unimplemented recommendations already made to federal and provincial/territorial governments on this subject.<sup>66</sup>

### III. DOMESTIC REPORTING: LEGAL STRATEGIES COALITION

In February 2015, the Legal Strategies Coalition, made up of indigenous, women's and human rights organizations, including FAFIA, released a study that found only a few of the more than 700 recommendations made over the last twenty years on the subject of violence against Aboriginal women and girls have been implemented.<sup>67</sup> The study reviewed 58 reports published between 1994 and 2014.<sup>68</sup>

The Coalition's study also concluded that there is a consensus across reports that the root causes of violence against Aboriginal women and girls stem from a longstanding history of discrimination against them, beginning with colonization and continuing today through law and policy.<sup>69</sup> In a similar vein, reports consistently concluded with similar recommendations—including the need for a national commission of inquiry and a national action plan; and the need for greater allocation of resources to address causes of violence and to provide support services to women and girls affected by it.<sup>70</sup>

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64 *Ibid* at para 309.

65 Human Rights Committee, *2006 Concluding observations supra* note 1.

66 IACHR, *Missing and Murdered Indigenous Women supra* note 54 at para 212; and CEDAW, *Article 8 Inquiry supra* note 39 at paras 103-4, 110.

67 Legal Strategy Coalition, Press Release, "Hundreds of recommendations go unimplemented: Legal Strategy Coalition demands greater government commitment and accountability to ending violence against Indigenous women and girls" (16 February 2015), online: LEAF <<http://www.leaf.ca/legal-strategy-coalition-on-mmiw/>>.

68 *Ibid* (see "A list of the recommendations contained in the previous reports is here").

69 Legal Strategies Coalition, *Violence against Indigenous women and girls in Canada Review of reports and recommendations – Executive Summary*, prepared by Pippa Feinstein & Megan Pearce, 26 February 2015, at 1, online: LEAF <<http://www.leaf.ca/wp-content/uploads/2015/02/Executive-Summary.pdf>>.

70 *Ibid* at 2-4.

## IV. DOMESTIC DEVELOPMENTS: GOVERNMENT ACTION & CIVIL SOCIETY RESPONSE

### a. GOVERNMENT ACTION

Federal and provincial/territorial governments, and affiliated public agencies, have taken some action. However, both the IACHR and the CEDAW Committee, after comprehensive and recent reviews of all governmental measures, concluded that Canada's actions fall short of meeting State obligations to prevent, investigate, prosecute and remedy acts of violence against Aboriginal women and girls.<sup>71</sup>

Canada, however, insists that its actions are sufficient. It rejects recommendations for a national inquiry and national action plan. Canada points, for example, to:

- a special parliamentary committee that was established in 2013 to report on the violence;<sup>72</sup> recommendations from this committee informed the Government of Canada's September 2014 action plan to improve government response;<sup>73</sup>
- an on-going public interest investigation into the reports of police abuse and acts of violence against Aboriginal women and girls in northern British Columbia being conducted by the national police complaints commission, the Civilian Review and Complaints Commission for the RCMP;<sup>74</sup> and
- a National Roundtable on Missing and Murdered Indigenous Women and Girls held in February 2015, during which federal, provincial and territorial government officials met with Aboriginal organizations and community stakeholders, including affected families,<sup>75</sup> to discuss three priority areas: prevention and awareness, community safety and policing measures and justice responses.<sup>76</sup> At the roundtable, there was a

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71 IACHR, *Missing and Murdered Indigenous Women supra* note 54 (see at 85-127 on Canada's response to violence against indigenous women in BC); and CEDAW, *Article 8 Inquiry supra* note 39 (see section V. Submissions presented by and information received from the State party at paras 32-81).

72 House of Commons, Special Committee on Violence Against Indigenous Women (IWFA), *Invisible Women: A Call to Action A Report on the Missing and Murdered Indigenous Women in Canada* (March 2014) (Chair: Stella Ambler), online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6469851&Language=E&Mode=1&Parl=41&Ses=2>>.

73 Canada, Status of Women, *Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls* (Ottawa: Status of Women Canada, 2014), online: <<http://www.swc-cfc.gc.ca/violence/efforts/action-eng.pdf>> [Canada, *Action Plan to Address Family Violence*].

74 Canada, Civilian Review and Complaints Commission for the RCMP, "Chair-Initiated Complaint and Public Interest Investigation Regarding Policing in Northern British Columbia May 15, 2013", Civilian Review and Complaints Commission for the RCMP (9 May 2014), online: CRCC <<https://www.crcc-ccetp.gc.ca/en/chair-initiated-complaint-and-public-interest-investigation-regarding-policing-northern-british>> (also see CEDAW, *Article 8 Inquiry supra* note 39 at para 155).

75 Assembly of First Nations, Media Release, "National Roundtable on Missing and Murdered Indigenous Women and Girls to gather families, indigenous leaders, premiers, federal and provincial ministers" (24 February 2015), online: CNW <<http://www.newswire.ca/en/story/1492151/media-advisory-national-roundtable-on-missing-and-murdered-indigenous-women-and-girls-to-gather-families-indigenous-leaders-premiers-federal-and-provi>>.

76 Assembly of First Nations, Media Release on behalf of parties to the Roundtable, "Working Together to Prevent and Address Violence Against Indigenous Women and Girls" (28 February 2015), online: CNW

commitment to hold a second Roundtable by the end of 2016 and for and for parties to the Roundtable to work collaboratively toward the future development, implementation and funding for a prevention and awareness campaign aimed at ending violence against Aboriginal women and girls.

There have been some programmatic and/or legislative changes made at the provincial and federal levels to respond to the violence,<sup>77</sup> including a provincial inquiry into the violence in British Columbia,<sup>78</sup> and new short-term funding commitments made together with the 2014 Action Plan to develop community safety programs, and enhance criminal justice responses.<sup>79</sup>

However, both the IACHR and the CEDAW Committee took full account of governmental actions at the provincial and federal levels. Both recommended that Canada undertake a national public inquiry and develop a comprehensive national co-ordinated plan of action, among other detailed recommendations.<sup>80</sup>

The IACHR explicitly found the 2014 Action Plan wanting, noting that it does not meet the standard of a comprehensive national level action plan,<sup>81</sup> and the CEDAW report notes that

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<<http://www.newswire.ca/en/story/1494813/working-together-to-prevent-and-address-violence-against-indigenous-women-and-girls>> [AFN, Media Release on behalf of parties to the Roundtable, "Working Together"].

77 See Status of Women Canada, News Release, "Government of Canada meets with Aboriginal leaders, provincial and territorial governments, on taking action to end violence against Aboriginal women and girls" (27 February 2015), online: Government of Canada <<http://news.gc.ca/web/article-en.do?nid=942659&tp=1>> [SWC, News Release, "Government of Canada meets with Aboriginal leaders"]; and Human Rights Council, *Report of the Special Rapporteur supra* note 5 at para 36.

78 See British Columbia, Missing Women Commission of Inquiry, *Forsaken The Report of the Missing Women Commission of Inquiry*, by the Hon. Wally T. Oppal (Victoria: Government of British Columbia Missing Women Commission of Inquiry, 19 November 2012), online: <<http://www.missingwomeninquiry.ca/obtain-report/>>; also see Missing Women Commission of Inquiry, "About the Commission" (2013), online: <<http://www.missingwomeninquiry.ca/>>; CEDAW, *Article 8 Inquiry supra* note 39 at paras 73-77, 102, 109; IACHR, *Missing and Murdered Indigenous Women supra* note 54 at paras 204, 217-33 (see especially paras 226-30); and British Columbia Civil Liberties Association, West Coast Women's Legal Education and Action Fund & Pivot Legal, *Blueprint for Action*, by Darcie Bennet et al (Vancouver: BCCLA, West Coast LEAF, Pivot Legal, 2012), online: BCCLA <<https://bccla.org/wp-content/uploads/2012/11/20121119-Report-Missing-Women-Inquiry.pdf>> (affirming the community stance that a legitimate public inquiry must substantively include affected communities).

79 SWC, News Release, "Government of Canada meets with Aboriginal leaders" *supra* note 77; See *Ibid*; Human Rights Council, *Report of the Special Rapporteur supra* note 5 at para 35; Government of Canada, *Action Plan to Address Family Violence supra* note 73 at 1 (for example there are initiatives such as the Family Violence Initiative, the Family Violence Prevention Program, specialized police task forces, and designated cross-jurisdictional working groups, such as the Federal, Provincial and Territorial Working Group on Missing and Murdered Aboriginal Women at CEDAW, *Information provided in follow-up supra* note 30 at paras 59, 48; Human Rights Council, *Report of the Special Rapporteur supra* note 5 at para 35; CEDAW, *Article 8 Inquiry supra* note 39 at paras 61,134; and AFN, Media Release on behalf of parties to the Roundtable, "Working Together" *supra* note 76).

80 IACHR, *Missing and Murdered Indigenous Women supra* note 54 at para 309 (see also paras 288, 294-300, 304-15); CEDAW, *Article 8 Inquiry supra* note 39 at para 216(D)(i)-(iii) (see also paras 182-3, 187-8, 191-3).

81 *Ibid* at paras 295-7 (see also CEDAW, *Article 8 Inquiry ibid* at para 101: "...even if it[a coordinated action plan implementing the special parliamentary committee's 2014 recommendations] is

despite the continued assertions from the Government of Canada that it is meeting its obligations to effectively respond to the violence in a coordinated way, the Committee delegation was informed by Senior officials that at present there is no specific coordination mechanism, nor information centralization mechanism, to oversee the various initiatives being implemented by different public agencies and across levels of government.<sup>82</sup>

The IACHR and the CEDAW Committee found that Canada has a two-pronged obligation: 1) to prevent the risk factors that cause and perpetuate the violence; and 2) to strengthen justice system institutions so that they can respond effectively in cases of violence against women. Both the IACHR and the CEDAW Committee found that Canada's response continues to be un-coordinated, piecemeal and ineffective.

#### a.(i) POLICING DEFICIENCIES: COORDINATION AND ACCOUNTABILITY

There is an on-going need to improve police handling of cases of disappeared and murdered Aboriginal women and girls. Two areas of needed improvement include police coordination and accountability.

##### Coordination

There are approximately 200 municipal and provincial police agencies in Canada, as well as the Royal Canadian Mounted Police—Canada's national police service that polices in some provinces and territories pursuant to RCMP service contracts.<sup>83</sup>

Despite the many police agencies operating along different jurisdictional lines across the country, there are no current operating procedures to coordinate the sharing of cross-jurisdictional information when women are reported missing,<sup>84</sup> or to co-ordinate response. Further, while some police units have specific task forces to respond to violence against Aboriginal women and girls,<sup>85</sup> there is no clear indication how these special task forces share cross-jurisdictional information, or are able to operate effectively when their budgets are drastically cut, as is the case with BC's RCMP E-Pana task force.<sup>86</sup>

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implemented, this coordinated action plan would not be comprehensive enough as the final recommendations of the Special Parliamentary Committee on Violence against Indigenous Women are of a too general nature and they fail to cover some main issues, including police misconduct").

82 CEDAW, *Article 8 Inquiry supra* note 39 at para 188.

83 *Ibid* at para 148; 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 40, online: HRW <[http://www.hrw.org/sites/default/files/reports/canada0213webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf)> [HRW, *Those Who Take Us Away*].

84 CEDAW, *Article 8 Inquiry supra* note 39 at para 149; IACHR, *Missing and Murdered Indigenous Women supra* note 54 at para 205.

85 Human Rights Council, *Report of the Special Rapporteur supra* note 5 at para 35; CEDAW, *Article 8 Inquiry supra* note 39 at paras 61, 134.

86 Lori Culbert, "Police budget, officers cut in Highway of Tears probe Task force financially gutted as cases remain unresolved", *The Vancouver Sun* (13 September 2014), online: <<http://www.vancouversun.com/news/Police+budget+officers+Highway+Tears+probe/10196415/story.html>>.

## Accountability

There is longstanding distrust of police by Aboriginal women and girls—a group that is both over-policed and under-protected. Aboriginal women and girls are unlikely to report mistreatment because of police bias, stereotyping of Aboriginal women and girls and fear of retaliation.<sup>87</sup> When Aboriginal women and girls do report violence, there is a general lack of faith that police will respond effectively and handle the case in a just way.<sup>88</sup>

With the passing of Bill C-42 in 2013, the Commission for Public Complaints Against the RCMP became the Civilian Review Complaints Commission for the RCMP (CRCC).<sup>89</sup> The CRCC has increased powers to undertake an investigation into police misconduct; however, the fact that the Commission's reports to the Minister of Public Safety and is unable to enforce the recommendations that emerge from its investigations have triggered skepticism and a lack of confidence in the new body.<sup>90</sup> The RCMP continues to investigate its own officers in cases of alleged police misconduct.<sup>91</sup> On this point, the CEDAW Committee recommended Canada “ensure the independence of oversight bodies to investigate cases of abuse and misconduct of police officers, and in particular...enhance the independence of the RCMP oversight body (CRCC) by ensuring that investigations of misconduct by RCMP officers are not investigated by members of its own body.”<sup>92</sup> Recent incidents of alleged police misconduct by the Medicine Hat police,<sup>93</sup> and the dehumanizing act of a Canadian court in the murder trial of Cindy Gladue,<sup>94</sup> coupled with the shock expressed by many upon the non-guilty verdict,<sup>95</sup> exemplify the type of occurrences that fuel distrust of the justice system by Aboriginal women and girls.

On the issue of coordination, the Committee on the Elimination of Discrimination against Women recommended that the State “establish mechanisms to ensure inter-jurisdictional and inter-agency coordination of law enforcement agencies” and information-sharing and cooperation across RCMP and other police agency jurisdictions.<sup>96</sup> Of note, the Committee

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87 CEDAW, *Article 8 Inquiry supra* note 39 at paras 138-42 (also see HRW, *Those Who Take Us Away*, *ibid*, at 34, 36, 46, 59, 74).

88 CEDAW, *Article 8 Inquiry supra* note 39 at para 146.

89 Bill C-42, *An Act to Amend the Royal Canadian Mounted Police Act and to Make Related and Consequential Amendments to other Acts*, 1<sup>st</sup> Sess, 41<sup>st</sup> Parl, 2013, online: LEGISinfo <<http://www.parl.gc.ca/legisinfo/BillDetails.aspx?Language=E&Mode=1&billId=5683261>> (also see CEDAW, *Article 8 Inquiry supra* note 39 at para 152; IACHR, *Missing and Murdered Indigenous Women supra* note 54 at paras 237-40).

90 CEDAW, *Article 8 Inquiry supra* note 39 at para 153 (also see para 156).

91 *Ibid* at paras 157-8.

92 *Ibid*.

93 Jorge Barrera, “Medicine Hat police could face public interest investigation over how officers handled murder case against Cree woman”, *APTN National News* (19 May 2015), online: <<http://aptn.ca/news/2015/05/19/medicine-hat-police-face-public-investigation-officers-handled-murder-case-cree-woman/>>.

94 Elizabeth Renzetti, “Cindy Gladue was reduced to a body part”, *The Globe and Mail* (6 April 2015), online: <<http://www.theglobeandmail.com/globe-debate/reduced-to-a-body-part/article23790508/>>.

95 “Cindy Gladue case: Why the non-guilty verdict has sparked outrage”, *CTV News* (2 April 2015), online: <<http://www.ctvnews.ca/canada/cindy-gladue-case-why-the-not-guilty-verdict-has-sparked-outrage-1.2309102>>.

96 CEDAW, *Article 8 Inquiry supra* note 39 at para 216(A) Police investigations and law enforcement (i).

identified that many of the policing failures noted in the BC Missing Women Commission of Inquiry persist.<sup>97</sup>

The Government's of Canada's September 2014 action plan on violence against Aboriginal women and girls does not include improved police complaint oversight and accountability measures;<sup>98</sup> nor does follow-up to the February 2015 roundtable note any government commitments on the subject.<sup>99</sup>

#### a.(ii) DATA

The report by the Committee on the Elimination of Discrimination against Women highlighted the deficiencies of data collection on missing and murdered Aboriginal women and girls in Canada.<sup>100</sup>

Statistics Canada reports that Aboriginal women and girls suffer disproportionately high rates of violent victimization in Canada,<sup>101</sup> with Aboriginal women accounting for a minimum of 8 percent of murdered women 15 years or older between 2001 and 2011<sup>102</sup>. This statistic is double the 4 percent representation of Aboriginal women in Canada.<sup>103</sup>

The RCMP released data on missing and murdered Aboriginal women in May 2014.<sup>104</sup> A second report is expected.<sup>105</sup> The 2014 report states that the number of missing and/or murdered Aboriginal women that they can document is close to two thousand, confirming that Aboriginal women are significantly overrepresented amongst Canada's murdered and missing women.<sup>106</sup> While the data provides limited guidance, given the inconsistency of data variables,

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97 *Ibid* at para 135; *supra* note 78 (for further information about B.C.'s Missing Women Commission of Inquiry, see the submission of the B.C. CEDAW Group to the Human Rights Committee on the occasion of Canada's sixth periodic review).

98 Canada, *Action Plan to Address Family Violence* *supra* note 73 (also see *supra* note 88).

99 AFN, Media Release on behalf of parties to the Roundtable, "Working Together" *supra* note 76; SWC, News Release, "Government meets with Aboriginal leaders" *supra* note 77.

100 CEDAW, *Article 8 Inquiry* *supra* note 39 at paras 159-66.

101 Statistics Canada, *Measuring violence against women: Statistical trends*, Maire Sinha ed, Catalogue No 85-002-X (Ottawa: Canadian Centre for Justice Statistics, 2013), at 6, 9, online: <<http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>>.

102 *Ibid* at 19.

103 *Ibid*.

104 Royal Canadian Mounted Police, Press Release, "RCMP Releases National Operational Review on Missing and Murdered Aboriginal Women" (16 May 2014), online: RCMP <<http://www.rcmp-grc.gc.ca/news-nouvelles/2014/05-16-eng.htm>>.

105 Gloria Galloway, "RCMP to release second report on missing aboriginal women", *The Globe and Mail* (31 March 2015), online: <<http://www.theglobeandmail.com/news/politics/rcmp-to-release-second-report-on-missing-aboriginal-women/article23727649/>>; Tanya Talaga, "RCMP to update report on missing and murdered aboriginal women," *The Toronto Sun* (1 April 2015), online: <<http://www.thestar.com/news/canada/2015/04/01/rcmp-to-update-report-on-missing-and-murdered-aboriginal-women.html>>.

106 CEDAW, *Article 8 Inquiry* *supra* note 39 at para 163; Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview*, Catalogue No PS64-115/2014E-PDF (Ottawa: RCMP, 2014), at 3, online: RCMP <<http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>>.

including the lack of a mandated ethnicity variable, over time and across jurisdictions,<sup>107</sup> the RCMP report validates the long-standing knowledge in Aboriginal communities that the number of murdered and missing Aboriginal women is alarmingly high. Official statistics, even the RCMP's latest ones, probably still represent an undercount.<sup>108</sup>

This is the data Canada has, but it is clearly inadequate. Sex- and race or ethnicity-disaggregated data is not compiled across all policing units and jurisdictions in Canada because, according to the RCMP, bias-free policing policies and privacy legislation prohibit it;<sup>109</sup> even in cases where Statistics Canada mandates the collection of data on the indigenous status of victims or perpetrators, police units, including the RCMP, fail to collect and provide such data for public use.<sup>110</sup> Recent statements by the Minister for Aboriginal Affairs, Bernard Valcourt blaming Aboriginal men as the major cause for the murders and disappearances of Aboriginal women is not only possibly inaccurate and premature, but diverts attention from the real issue, which is the obligation of Canada to address the root causes of the extreme violence against Aboriginal women and girls by men, regardless of their race.<sup>111</sup> While there are initiatives to increase the ease of collecting ethnicity data by the Canadian Police Information Centre<sup>112</sup> and the National Centre for Missing Persons and Unidentified Remains (NCMPUR),<sup>113</sup> there is currently no government agenda to mandate the collection of sex- and ethnicity-disaggregated data as part of the current 2014 action plan to respond to violence against Aboriginal women and girls.<sup>114</sup>

Given the deficiencies of sex- and ethnicity-disaggregated data collection in Canada—a reality that is acknowledged by the State<sup>115</sup>—there is no complete set of disaggregated data on the total number of investigations, prosecutions, convictions and sanctions imposed in cases of disappearances and murders of Aboriginal women and girls to submit to the Committee as per its request in the list of issues.<sup>116</sup>

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107 *Ibid* at 3-4.

108 See Native Women's Association of Canada, Press Release, "NWAC not surprised by numbers of Missing and Murdered Aboriginal Women reported in RCMP's National Operational Overview" (16 May 2014), online: NWAC <<http://www.nwac.ca/press-release-immediate-release-2014-05-16-en>>.

109 CEDAW, *Article 8 Inquiry supra* note 39 at 159 (also see HRW, *Those Who Take Us Away supra* note 83 at 26-7, 81; and Human Rights Council, *Report of the Working Group on the Universal Periodic Review Canada Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, UN Doc A/HRC/24/11/Add.1, 17 September 2013, at para 39, online: OHCHR <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession16.aspx>>).

110 CEDAW, *Article 8 Inquiry supra* note 39 at para 159.

111 Gloria Galloway, "70 percent of murdered aboriginal women killed by indigenous men: RCMP", *The Globe and Mail* (9 April 2015), online: <<http://www.theglobeandmail.com/news/politics/70-per-cent-of-murdered-aboriginal-women-killed-by-indigenous-men-rcmp-confirms/article23868927/>>.

112 CEDAW, *Article 8 Inquiry supra* note 39 at para 162.

113 *Ibid* at para 161.

114 Canada, *Action Plan to Address Family Violence supra* note 73 (while the special parliamentary committee recommended the federal government consider collecting data that includes an ethnicity variable at 16, there is no concrete commitment to do so in the plan).

115 CEDAW, *Article 8 Inquiry supra* note 39 at para 164.

116 Human Rights Committee, *List of issues in relation to the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/Q/6, 21 November 2014, at para 13, online: OHCHR <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fQ%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fQ%2f6&Lang=en)>.

In review of the data available, and Canadian state and police policies on data collection, the Committee on the Elimination of Discrimination against Women in its recent report recommended Canada:

Systematically collect data, disaggregated by ethnicity of victims and offenders, on all forms of violence against women, including on the number of Aboriginal women engaged in prostitution and trafficked women, as well as on cases of missing and murdered women, make such data collection mandatory for all police detachments.<sup>117</sup>

#### a.(iii) SOCIAL AND ECONOMIC MARGINALIZATION

Both the IACHR and the CEDAW Committee concluded that Canada has an obligation to address the risk factors that cause the violence, specifically by implementing a comprehensive and nationally co-ordinated plan to address the social and economic marginalization of Aboriginal women and girls.<sup>118</sup>

As of May 2015, there is no such plan in place. There is discussion at the Aboriginal Affairs Working Group (AAWG), which is composed of officials from the provinces and territories and representatives of National Aboriginal Organizations. The AAWG indicates in its latest progress report that it is drafting principles for a socio-economic plan to address the marginalization of Aboriginal women.<sup>119</sup>

Any plan that may emerge from the AAWG will need the approval of Provincial and Territorial Ministers and Premiers. Also, in the absence of the participation of the Government of Canada, which does not participate in the AAWG, any plan will lack resources, implementation capacity, national co-ordination, and jurisdiction in significant areas, such as on reserves.

In short, Canada has no national co-ordinated plan which satisfies its obligation of due diligence to prevent, investigate, prosecute and remedy violence against Aboriginal women and girls.

#### b. CIVIL SOCIETY

There is an overwhelming call for a national inquiry. In addition to international and regional human rights experts at the UN and IACHR, many Canadian stakeholders have voiced their public support for an inquiry, including the Canadian Human Rights Commission, the Canadian Association of Statutory Human Rights Agencies (CASHRA), all provincial Premiers, the Federal Ombudsman for Victims of Crime, National Aboriginal Organizations,

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117 CEDAW, *Article 8 Inquiry supra* note 39 at para 216(A) Data Collection (i).

118 IACHR, *Missing and Murdered Indigenous Women supra* note 54 at paras 11, 13, 306; CEDAW, *Article 8 Inquiry supra* note 39 at paras 203, 210 and X. Recommendations B. Improving socio-economic conditions of Aboriginal women.

119 Aboriginal Affairs Working Group, *Progress Report to Provincial and Territorial Ministers of Aboriginal Affairs and National Aboriginal Organization Leaders* (May 2015).

and women's, social justice and human rights organizations, such as Amnesty International and Human Rights Watch.<sup>120</sup>

Most recently,<sup>121</sup> the Truth and Reconciliation Commission of Canada—a public commission in response to the legacy of Canadian residential schools for Aboriginal children—released a call to action that includes a call upon the federal government to establish a public inquiry into the disproportionate victimization of Aboriginal women and girls.<sup>122</sup> Canada's Chief Justice, Beverley McLachlin, recently set public precedent for high-ranking officials, by recognizing Canada's past actions against Aboriginal peoples as attempted cultural genocide.<sup>123</sup> The Commission's findings affirm this categorization.<sup>124</sup>

The Government of Canada has repeatedly refused to undertake a national inquiry, even though all Provincial and Territorial Premiers and all National Aboriginal Organizations have called for it. Prime Minister Harper refuses. He is on record stating: "... it isn't really high on our radar, to be honest."<sup>125</sup>

Canada's response to the violence is unco-ordinated, insufficient, piecemeal and inadequate. A national inquiry is a much-needed, coordinated action. It is needed to allow governmental and non-governmental stakeholders to come together to design and implement a coordinated plan that is national in scope, and to structure an implementation protocol and mechanism that can ensure that the plan is carried out, practically, over time and with financial resources and community participation.

Aboriginal women, their organizations and supporters, human rights groups, and many Canadians remain dedicated to achieving fulfillment of the human rights of Aboriginal women and girls.

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120 CEDAW, *Article 8 Inquiry supra* note 39 at para 182.

121 Truth and Reconciliation Commission of Canada, News Release, "TRC releases calls to action to begin reconciliation" (2 June 2015), online: TRC <<http://www.trc.ca/websites/trcinstitution/File/TRCReportPressRelease%20%281%29.pdf>>.

122 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg, MB: TRC, 2015), Recommendation 41 at 4, online: TRC <[http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf)>.

123 "Chief Justice says Canada attempted 'cultural genocide' on Aboriginals", *The Globe and Mail* (28 May 2015), online: <<http://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>>.

124 "Truth and Reconciliation Commission urges Canada to confront 'cultural genocide' of residential schools", *CBC News* (2 June 2015), online: <<http://www.cbc.ca/news/politics/truth-and-reconciliation-commission-urges-canada-to-confront-cultural-genocide-of-residential-schools-1.3096229>>.

125 Tanya Kappo, "Stephen Harper's comments on missing, murdered Aboriginal women show 'lack of respect'", *CBC News* (19 December 2014), online: <<http://www.cbc.ca/news/aboriginal/stephen-harper-s-comments-on-missing-murdered-aboriginal-women-show-lack-of-respect-1.2879154>>.

## **V. RECOMMENDATIONS**

The Committee on the Elimination of Discrimination against Women found Canada to be in violation of Articles 2, 3, 5, 14 and 15 of the *Convention* in its report dated March 2015.

The Human Rights Committee's review of Canada is the first UN treaty body review of the State since the CEDAW Committee's Inquiry report under Article 8 of the Optional Protocol to CEDAW was issued. Given the similar spirit of Articles 2, 3, and 26 of the *Covenant*, it is FAFIA and NWAC's hope that the Human Rights Committee will reaffirm its 2006 concluding recommendation on the subject and, in particular:

- 1. Call upon the Government of Canada to establish an independent, national public inquiry that is led by and accountable to Aboriginal women and Aboriginal women's organizations;***
- 2. Urge the Government of Canada and Provincial/Territorial Governments to fully and promptly implement the CEDAW Committee recommendations, in recognition that Canada is in violation of its international human rights obligations;***
- 3. Highlight the need for improved police response, data collection, co-ordination of police agencies and institutions and police oversight as noted in the CEDAW recommendations; and***
- 4. Reiterate the indivisibility of economic, social, cultural, political and civil rights and the critical need for Canada to address the root causes of violence, including the socio-economic marginalization of Aboriginal women and girls.***