



# Violations of Women's Rights in Canada

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

Submitted in April 2023 by the Canadian Feminist Alliance for International Action (FAFIA), with Justice for Girls, and Dr. Pamela Palmater, Chair in Indigenous Governance, Toronto Metropolitan University

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## Introduction

This is a joint submission to Canada's Fourth Universal Periodic Review on four key human rights issues affecting women and girls in Canada. It is submitted by the [Canadian Feminist Alliance for International Action](#) (FAFIA), 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.

This submission is endorsed and supported by [Justice for Girls](#), a non-profit organization that promotes social, economic and environmental justice and an end to violence, poverty and racism in the lives of teenage girls who live in poverty in Canada.

It was prepared with the support and assistance of [Dr. Pamela Palmater](#), the Chair in Indigenous Governance at Metropolitan University, and a leading Canadian advocate on Indigenous women's issues.

It is not a comprehensive report. Many more issues call for scrutiny by the Human Rights Council than FAFIA, Justice for Girls and Dr. Palmater are able to report on within the word limits and time available.

See Appendix D for further information on FAFIA, Justice for Girls and Dr. Palmater.

## Acknowledgements

Thank you to FAFIA's valued partners and members who have assisted with the many reports and documents which contributed to this submission. Thank you to Rachel Singleton-Polster for her collaboration, research and support.

## Human Rights Implementation

### I. Lack of domestic mechanism to implement treaty body recommendations: recommendations 35, 36, and 37 Third UPR of Canada

For years, UN treaty bodies and Canadian civil society organizations have expressed concern that Canada's domestic implementation of its obligations under international human rights law falls short, and that there is no mechanism to monitor Canada's follow-up to concluding observations, UPR recommendations, decisions on petitions, or reports from mandate holders.

Many recommendations have been made to Canada on this subject. In 1999, the Human Rights Committee urged Canada to “establish a public body responsible for overseeing implementation” of the CCPR and for reporting on any deficiencies.<sup>1</sup> This request for an effective mechanism that monitors compliance with international treaty obligations was echoed by both CEDAW and CRC in Concluding Observations in 2003.<sup>2</sup> The CRC urged Canada to ensure that the provinces and territories are aware of their obligations under the Children's Convention, and that they take appropriate measures through legislation and policy to meet them.<sup>3</sup> The CRC recommended better Federal-Provincial-Territorial (FPT) collaboration, and co-ordinated implementation across Canada.<sup>4</sup>

In 2006, the ECSR Committee noted that despite FPT information sharing, effective procedures to follow-up on CESCRC's Concluding Observations had not been developed and its recommendations had not been implemented. CESCRC reiterated its own previous recommendations, and urged the federal Government take “concrete steps to ensure that provinces and territories are made aware of the State party's legal obligations under the Covenant.”<sup>5</sup>

Also in 2006 the ESCR Committee asked Canada, as it had almost nine years earlier, to establish transparent and effective mechanisms, with the participation of all levels of government as well as civil society and Indigenous Peoples, with the specific mandate to follow up on the Committee's Concluding Observations.<sup>6</sup>

In 2007, the HRC observed that many of its 1999 recommendations remained unimplemented, especially the recommendation to establish oversight procedures for the implementation of the Covenant, which would provide for public reporting on any deficiencies in a transparent and

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<sup>1</sup> Concluding observations of the Human Rights Committee, CCPR/C/79/Add.105, 7 April 1999, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/099/27/PDF/N9909927.pdf?OpenElement>, para 10.

<sup>2</sup> Report of the Committee on the Elimination of Discrimination against Women, Fifty-eighth Session Supplement No. 38 (A/58/38), <https://www.fafia-afai.org/wp-content/uploads/2015/02/2-2003-CEDAW-Concluding-Comments.pdf> and UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: Concluding Observations: Canada, 27 October 2003, CRC/C/15/Add.215, available at: <https://www.refworld.org/docid/403a22804.html>, para 9.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid, para 11.

<sup>5</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada, 22 May 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5, available at: <https://www.refworld.org/docid/45377fa30.html>, para 35.

<sup>6</sup> Ibid.

accountable manner, and guarantee full participation of all levels of government and of civil society, including Indigenous Peoples.<sup>7</sup>

These recommendations, made over several cycles of review, reveal Canada's failure to implement four consistent recommendations of UN treaty bodies:

- Establish a public body responsible for overseeing implementation of treaty body recommendations;
- Ensure that the provinces and territories are aware of their obligations to implement the rights under the treaties;
- Report on any lack of compliance in a transparent and accountable manner;
- Engage with civil society, including Indigenous Peoples.

Recommendations 35, 36 and 37 from the Third UPR urged Canada to establish a mechanism to follow up on recommendations and implement human rights at all levels of government.<sup>8</sup> Canada agreed to these recommendations in 2018 and stated: “governments are developing a protocol for follow-up to recommendations from international human rights bodies and a strategy for engagement with civil society and Indigenous representatives.”<sup>9</sup>

At the 2017 meeting of FPT Ministers Responsible for Human Rights, Ministers created a new FPT Senior Officials Committee Responsible for Human Rights (SOCHR), and renewed the mandate of the Continuing Committee of Officials responsible for Human Rights (CCOHR). At the 2020 meeting, FPT Ministers adopted a *Protocol for Follow-up to Recommendations from International Human Rights Bodies*<sup>10</sup> and an *Engagement Strategy on Canada's International Human Rights Reporting Process*.<sup>11</sup> They also created the Forum of Ministers on Human Rights. While formalization of a Protocol and Engagement Strategy, of the mandates of these Committees, and of the Forum of Ministers is welcome, these steps do not reflect, in substance, the many recommendations made by UN bodies and by civil society organizations.

The Protocol and Engagement Strategy were developed without NGO input and consultation, and they lack detail. They promise exchange of information, but no concrete procedures for oversight and implementation. There has been no effective engagement with civil society organizations or Indigenous organizations to follow-up on important recommendations from

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<sup>7</sup> International Covenant on Civil and Political Rights, Concluding observations of the Human Rights Committee, CCPR/C/CAN/CO/5, 20 April 2006, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/413/62/PDF/G0641362.pdf?OpenElement>.

<sup>8</sup> 2018 UPR Working Group Report at Rec 142.35, 142.36, and 142.37 2018 Canada's Reply, para 7.

<sup>9</sup> Ibid. Canada's reply, para 7.

<sup>10</sup> Government of Canada, *Protocol for Follow-up to Recommendations from International Human Rights Bodies*, online: <https://www.canada.ca/en/canadian-heritage/services/about-human-rights/protocol-follow-up-recommendations.html>

<sup>11</sup> Government of Canada, *Engagement Strategy on Canada's International Human Rights Reporting Process*, online: <https://www.canada.ca/en/canadian-heritage/services/about-human-rights/engagement-strategy-human-rights-reporting.html>

recent treaty body reviews of Canada.<sup>12</sup> The Forum of Ministers has been created, but it has yet to meet, and there is no information about its powers and mandate. We do not know whether it will make decisions, and engage with civil society and Indigenous groups. In short, there is still no transparent and accountable body, that provides co-ordination between governments, and that has powers to review recommendations from treaty bodies, to engage with civil society organizations, and take follow-up steps.

FAFIA submits that the steps Canada has taken since the Third UPR do not satisfy the intent of the recommendations, which is the adoption of procedures and mechanisms that will measurably improve the implementation of Canada's human rights obligations in all jurisdictions.

### RECOMMENDATIONS

**That the Government of Canada, in collaboration with the provinces and territories:**

- **Ensure that the Forum of Ministers, with input from civil society and Indigenous groups, design a new national mechanism for monitoring and implementing treaty rights and recommendations from treaty bodies, Special Procedures and UPR in a coordinated, effective and transparent way.**
- **Attach conditions to the transfer of federal funding to provinces and territories that requires a minimum standard of domestic implementation of international human rights standards and compliance with treaty body recommendations.**
- **Review all recommendations of the CEDAW Committee and other treaty bodies regarding women's human rights, to identify outstanding and priority recommendations, and, with women's organizations, and sub-national governments, devise a plan for implementation.**

## Sex Discrimination in the *Indian Act*

### I. Canada's failure to implement recommendations to eliminate all sex discrimination from the *Indian Act*

In its Third UPR, Canada received three recommendations (78, 79, and 80)<sup>13</sup> which urged the elimination of all sex discrimination in the *Indian Act*.<sup>14</sup> In its Second UPR, in 2013, the Human Rights Council also recommended that Canada eliminate all sex discrimination from the provisions of the *Indian Act* and grant women and men the same rights with regards to Indian status.<sup>15</sup> Further, UN treaty bodies and mandate holders have recommended repeatedly since

<sup>12</sup> For example, there has been no engagement with FAFIA or Indigenous women's organizations about recommendations from the Committee on the Rights of the Child at its most recent review of Canada, although none of them can be adequately implemented without extensive engagement with women's and Indigenous women's organizations. See CRC/C/CAN/CO/5-6, 23 June 2022, paras 21, 24(d), 27(b), 30, 32, 38.

<sup>13</sup> 2018 UPR Working Group Report at Rec 142.78; 142.79; 142.80; 2018 Canada's Reply, para 10.

<sup>14</sup> *Indian Act*, RSC 1985, c-15.

<sup>15</sup> 2013 UPR Working Group Report at Rec 128.59; 2013 Canada's Reply, para 16.

1999 that Canada remove all sex discrimination from the *Indian Act* and repair the harms done to Indigenous women and their descendants.<sup>16</sup>

While the *core* of the pre-1985 sex discrimination was removed from the *Indian Act* when Bill S-3 was fully promulgated in August 2019, not *all* of the sex discrimination in the *Indian Act* has been eliminated. FAFIA submits that Canada must act urgently to fully eliminate all remaining sex discrimination from the *Indian Act* in order to finally dismantle this legislated forced assimilation. Canada must also repair the harms to Indigenous women, their descendants and their communities that have been caused by decades of sex discrimination.

### II. History of Sex Discrimination

Since its inception in 1876, the *Indian Act* has defined who is an 'Indian,' entitled to recognition by Canada, and owed duties. 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 the beginning, the *Indian Act* defined an Indian as: a male Indian, the wife of a male Indian, or the child of a male Indian. Under successive versions of the *Indian Act*, for the most part, Indian women had no independent status or ability to transmit status to their descendants. There was a one-parent rule for transmitting status and the transmitting parent was male. Indian women lost status when they married a non-Indian, while Indian men endowed Indian status on their non-Indian wives.<sup>17</sup> In other words, the *Indian Act* recognized only patrilineal descent and penalized Indigenous women, but not men, for 'marrying out.'

Since 1971, First Nations women and their descendants have challenged this discrimination repeatedly in Canadian courts.<sup>18</sup> In addition, petitions to the UN Human Rights Committee and CEDAW have been filed by Sandra Lovelace, Sharon McIvor and Jeremy Matson.<sup>19</sup> Each time, women and their descendants have won in court or at the UN, Canada has amended the *Indian Act*'s registration provisions. Some thousands of First Nations women and their descendants have had their status reinstated or have been made newly eligible for registration by 1985, 2011, and 2017 amendments.

But every time, Canada removes only the sliver of discrimination identified in the court or UN decision, and fails to eliminate *all* the sex discrimination. Through this fifty-year-long struggle with First Nations women, Canada has demonstrated its reluctance to relinquish sex discrimination, which has been an effective means of diminishing the pool of Indians to whom it owes fiduciary duties by redefining them as non-Indian.

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<sup>16</sup> See Annex A for a listing of all treaty body recommendations calling for removal of sex discrimination from the *Indian Act*.

<sup>17</sup> Royal Commission on Aboriginal Peoples. Volume I, *Looking Forward, Looking Back*, pp. 251-262, [https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP1\\_combined.pdf?sequence=5&isAllowed=y](https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP1_combined.pdf?sequence=5&isAllowed=y); Volume 4, *Perspectives and Realities*, pp. 20 - 43, [https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP4\\_combined.pdf?sequence=2&isAllowed=y](https://qspace.library.queensu.ca/bitstream/handle/1974/6874/RRCAP4_combined.pdf?sequence=2&isAllowed=y); see also, Shelagh Day. "153 years of sex discrimination is enough." *The Toronto Star*, January 10, 2011: [https://www.thestar.com/opinion/editorialopinion/2011/01/10/153\\_years\\_of\\_sex\\_discrimination\\_is\\_enough.html](https://www.thestar.com/opinion/editorialopinion/2011/01/10/153_years_of_sex_discrimination_is_enough.html).

<sup>19</sup> See Annex A for listing of all Canadian court decisions on *Indian Act* sex discrimination.

In 2017, with the support of the Senate of Canada, First Nations women and their allies successfully obtained a broader amendment to the *Indian Act* - Bill S-3 - which has the effect of removing the *core* of the pre-1985 sex discrimination. It puts women and men, and patrilineal and matrilineal descendants, on the same legal footing with respect to eligibility for Indian status and transmission of status, going back to 1867.

Unfortunately, this major change to the *Indian Act*, which came into effect in August 2019, does not confer status on First Nations women and their descendants automatically. Until they are actually registered by the Canadian government, they still do not have status and enjoy its benefits. As of January 2023, Canada has registered only about 40,000<sup>20</sup> of the estimated 270,000 to 450,000 who are newly eligible.<sup>21</sup> This means that thousands of First Nations women and their descendants, who have been denied their right to equality, and their right to equal enjoyment of their Indigenous culture, have not yet received a remedy.

The lack of a pro-active, effective information campaign to ensure First Nations women and their descendants know that they are newly entitled, the cumbersome process, and unacceptable delays in registering the newly entitled, indicate an unwillingness on Canada's part to give up this colonial tool of assimilation.<sup>22</sup>

### III. Bill C-38, 2022 Proposed Amendment to the *Indian Act*

In December 2022, the Government of Canada tabled Bill C-38,<sup>23</sup> another amendment to the *Indian Act*. FAFIA supports the Bill C-38 provisions addressing the automatic loss of status by women and children of men who enfranchised, whether voluntarily or involuntarily,<sup>24</sup> and a new legal mechanism to facilitate reconnection with their natal Bands for women who were automatically transferred to their husbands' Bands when they married because of the patriarchal structure and operation of the *Indian Act*.<sup>25</sup>

<sup>20</sup> See Annex A for listing of all decisions by UN treaty bodies on petitions regarding Indian Act sex discrimination.

<sup>21</sup> Evidence of Shelagh Day, Chair, Human Rights Committee, Canadian Feminist Alliance for International Action, March 8, 2023, Senate Committee on Indigenous Peoples: <https://sencanada.ca/en/Content/Sen/Committee/441/APPA/31EV-56035-E>

<sup>22</sup> The Government of Canada estimated that between 270,000 and 450,000 First Nations women and their descendants were made newly eligible for status by Bill S-3. See: Government of Canada, Implementation of Bill S-3: Engaging on changes to registration, <https://www.sac-isc.gc.ca/eng/1619622534553/1619622552773>. This estimate is based on the work of independent demographers and was endorsed by the Parliamentary Budget Officer in his report on Bill S-3. See: Office of the Parliamentary Budget Officer, Bill S-3: Report on Sex-Based Inequities in Indian Registration, 5 December 2017, online at: [https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3\\_EN.pdf](https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3_EN.pdf).

<sup>23</sup> Indigenous Services Canada says that the registration process takes from 6 months to 2 years. However, community reports on the registration process indicate longer delays, and many other problems. Indigenous Services Canada's own report on the problems in Indian Act registration can be found here: <https://www.sac-isc.gc.ca/eng/1657191112753/1657191157646#chp7>. By contrast, Canada processes over 5 million passports every year in 10 to 20 working days - a form of registration which requires similar authentication of identity, birth, and ancestry.

<sup>24</sup> Bill C-38, An Act to amend the Indian Act (new registration entitlements). First Reading, December 14, 2022. (11 March 2023), online: <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-38/first-reading>.

<sup>25</sup> FAFIA fully supports the provisions that remove the discrimination against women and children who were involuntarily enfranchised (lost their status) because their husbands/fathers were enfranchised. However, FAFIA is also clear that there were women who were pressed into enfranchising "voluntarily" before marriage. It must be clear in the legislative language of the amendment that women who were enfranchised "voluntarily" before or after marriage will be re-entitled to status, and to band membership in their current or home First Nation - at their option.

However, one more time, this legislative fix is incomplete. FAFIA strongly objects to the introduction of one more amendment that does not address all the remaining discrimination in the *Indian Act*. To fully eliminate the remaining sex discrimination, Canada must immediately address four outstanding issues that are not resolved in the proposed amendment. These include: 1) removal of the bar to compensation for discrimination in the status registration provisions; 2) removal of the 6(1)(f) and 6(2) status categories, and of the second generation cut-off and the two-parent rule; 3) removal of differential entitlement to status based on pre and post 1985 birth and marriage dates; and 4) clarification that women and their descendants will not be denied status because an ancestor took scrip (Métis). See Appendix A for an explanation of these issues and solutions to address these concerns.

### IV. Mclvor Petition and the Need for Full Reparation

Because the 2010 amendment to the *Indian Act*, Bill C-3, did not fully remedy the sex discrimination challenged by Sharon Mclvor in her court case, she and her son, Jacob Grismer, filed a petition with the UN Human Rights Committee, claiming that the *Indian Act* continued to discriminate based on sex in violation of the *International Covenant on Civil and Political Rights*.<sup>26</sup> In 2019, the HRC upheld Sharon Mclvor's claim that the *Indian Act* violates the rights of First Nations women to equal protection of the law and to equal enjoyment of their culture guaranteed by the *ICCPR*.<sup>27</sup>

Further, the HRC in its August 2022 Report on *Follow up progress on individual communications*<sup>28</sup> has assessed Canada's response to the Committee's decision in *Mclvor v. Canada* as only partially satisfactory. Canada has failed to show that it has satisfied three standards: a) inclusive interpretation of section 6 (1)(a) of the *Indian Act* of 1985; b) taking

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<sup>26</sup> FAFIA fully supports the amendment which provides a new legal mechanism that would allow those women who lost the right to be members of their natal band prior to 1985, because they were transferred to their husband's band, to apply to have their membership in their natal band restored. The new mechanism and associated policies must ensure that it is easy to trigger this return. However, FAFIA urges that the amendment should clarify that women who were transferred automatically to their husband's bands have an unrestricted right to return to their natal band when and if they choose, whether it is a s. 10 or a s. 11 band. Furthermore, the *Indian Act* should contain a new provision that states that a band cannot exclude a woman whose status has been restored, corrected, or improved under the *Indian Act*, whether it is a s. 10 or a s. 11 band.

<sup>27</sup> *Mclvor v. Canada* (Communication No. 2020/2010). See: The Poverty and Human Rights Centre, "Mclvor v Canada" (August 19, 2011), <http://povertyandhumanrights.org/2011/08/mcivor-v-canada/>.

<sup>28</sup> UN Document CCPR/C/124/D/2020/2010, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2020/2010 (10 March 2023), [https://povertyandhumanrights.org/wp-content/uploads/2019/08/ccpr\\_c\\_124\\_d\\_2020\\_2010\\_28073\\_e.pdf](https://povertyandhumanrights.org/wp-content/uploads/2019/08/ccpr_c_124_d_2020_2010_28073_e.pdf).

steps to address residual discrimination within First Nations; and c) non-repetition. The HRC asked Canada to report back by February 2023 on additional measures it has taken to satisfy these standards and provide a full and effective remedy for the discrimination. To FAFIA's knowledge, no report has been submitted.

Full reparation would include registration of all those who are newly entitled to status by Bill S-3, compensation, apology, and education on the issue of sex discrimination in the *Indian Act*. FAFIA has been told by the Government of Canada that: "We do not currently have a mandate to negotiate on this matter."<sup>29</sup> FAFIA submits that Canada's response to its obligations under international law is wholly inadequate, especially considering Canada's commitment to make Canadian law consistent<sup>30</sup> with the *UN Declaration on the Rights of Indigenous Peoples*. The *Declaration* affirms, in Article 8, that States shall provide effective redress for any form of forced assimilation or integration.<sup>31</sup>

### V. Conclusion

In his recent visit to Canada, the Special Rapporteur on the Rights of Indigenous Peoples, Mr. José Francisco Calí Tzay, recommended that further amendments be made to the *Indian Act* "to eliminate the remaining discrimination" and that there should be "increased support for registration of women and their descendants who are newly eligible for status." The Special Rapporteur also recommended that Canada should create accessible remedies and compensation.<sup>32</sup>

Despite some progress, Canada refuses to act to fully remove all sex discrimination from the *Indian Act*, even though it has been urged to do so repeatedly by UN 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 fully and finally end this discrimination.

### VI. Recommendations

#### That the Government of Canada:

- **Implement the CEDAW and Human Rights Committee recommendations to fully eliminate all sex discrimination from the *Indian Act*.**
- **Initiate a pro-active, effective information campaign to ensure that First Nations women and their descendants know that they may be newly entitled to status, and assign sufficient resources to register them promptly.**

<sup>29</sup> United Nations Human Rights Committee, *Follow-up progress report on individual communications*, CCPR/C/134/4, 25 August 2022, para 6.

<sup>30</sup> Email sent from Jordano Nudo, October 8, 2020, "Responses to the Canadian Feminist Alliance for International Action - September 24, 2020." Government of Canada Document #84058618.

<sup>31</sup> See *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c. 14), <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/>.

<sup>32</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, article 8.2(d).

- **Include a new provision in the *Indian Act* to clarify that women and their descendants whose status has been restored, corrected, or improved by changes to the *Indian Act* are entitled to band membership, including in s.10 bands.**
- **Remove bars to compensation for all forms of discrimination against First Nations women and their descendants caused by status provisions of the *Indian Act*;**
- **Provide full reparations including compensation, apology, and education on sex discrimination in the *Indian Act*;**
- **Remove from the *Indian Act* the status categories of 6(1)(f) and 6(2), the second generation cut-off and the two-parent rule and establish a one-parent rule for transmission of status for both male and female parents.**
- **Provide sufficient funding to First Nations to support new members, and to correct historic underfunding of capacity, infrastructure and social programs.**

## Murders and Disappearances of Indigenous Women and Girls

### I. Concerns and Previous Recommendations from the HRC, CEDAW, IACHR, and Special Rapporteurs

In its Third UPR, Canada received numerous recommendations to combat and take action to end all forms of violence against Indigenous women and girls, including the crisis of disappearances and murders of Indigenous women and girls.<sup>33</sup> We welcomed the many recommendations on this issue in 2018, and call on the HRC to reiterate these recommendations to Canada due to its failure to effectively act on them, specifically:

- Canada accepted Recommendation 207 to address the significant levels of violence against Indigenous women, and its root causes but has not acted meaningfully to implement it;<sup>34</sup>
- Canada did not accept, but only noted, Recommendations 191 through 197 calling on Canada to devise a national plan of action, or strategy, to end violence against Indigenous women and girls.<sup>35</sup>

<sup>33</sup> United Nations Special Rapporteur on the Rights of Indigenous Peoples, Mr. José Francisco Calí Tzay, End of Mission Statement, 1-10 March 2023, <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-canada-sr-indigenous-2023-03-10.pdf> Page 8.

<sup>34</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada, UN Doc A/HRC/39/11 (2018) at Rec 142.75; 142.112; 142.179-212 [2018 UPR Working Group Report]; Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada Addendum, UN Doc A/HRC/39/Add.1 (2018) at para 17-19 [2018 Canada's Reply].

<sup>35</sup> 2018 UPR Working Group Report at Rec 142.207; 2018 Canada's Reply at para 17.

More than 130 Indigenous women and girls were reported as victims of a homicide, a suspicious death, or a death in custody from 2016 to 2019.<sup>36</sup> Between 2015 and 2020, Indigenous women accounted for 24% of all female homicide victims in Canada, despite representing only 5% of the female population.<sup>37</sup> Indeed, the Special Rapporteur on the Rights of Indigenous Peoples noted in his recent country visit that “in spite of the [...] MMIWG Calls for Justice, the number of missing and murdered Indigenous women and girls continues to increase and escalated during the COVID-19 pandemic.”<sup>38</sup>

Canada's actions have not slowed or curbed violence against Indigenous women and girls. In light of this data, FAFIA requests that the Council's 2018 recommendations, principally, recommendations 207 and 191 through 197 be reiterated.<sup>39</sup>

In 2018, the United Nations Special Rapporteur on violence against women, Dubravka Šimonović, made a country visit to Canada. In her concluding report, she pinpointed weaknesses in Canada's approach to addressing violence against women, particularly Indigenous women. She found that “Indigenous women face marginalization, exclusion, and poverty because of institutional, systemic, multiple, intersecting forms of discrimination that have not been addressed adequately by the state”<sup>40</sup>.

In 2015, the CEDAW Committee issued the report of its Article 8 investigation on missing and murdered Indigenous women and girls in Canada.<sup>41</sup> CEDAW found Canada in violation of the *Convention* and made 38 recommendations. The CEDAW Report followed the release of a report with similar findings and recommendations on missing and murdered Indigenous women and girls from the Inter-American Commission on Human Rights.<sup>42</sup> FAFIA is concerned that 37 of the CEDAW Committee's 38 recommendations and 9 of the 10 IACHR recommendations have not been implemented, and Canada still has no plan in place for implementing these outstanding recommendations.

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<sup>36</sup> 2018 UPR Working Group Report at paras 142.191-197; 2018 Canada's Reply at para 19.

<sup>37</sup> “MMIWG cases continued at same rate even after national inquiry began, data shows.” June 5, 2019. Accessed online 11 March 2023, <https://www.cbc.ca/news/indigenous/mmiwg-inquiry-new-cases-statistics-databases-1.5162482>

<sup>38</sup> Native Women's Association of Canada. “Native Women's Association of Canada Annual Report Card of Government's National Action Plan to Address MMIWG and Violence Finds (Very) Little Progress; Nanos Survey Shows Canadians Agree.”

June 3, 2022. <https://nwac.ca/media/2022/06/nwac-annual-report-card-of-governments-national-action-plan-to-address-mmiwg-and-violence-finds-very-little-progress-nanos-survey-shows-canadians-agree>

<sup>39</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, Mr. José Francisco Cali Tzay, End of Mission Statement, 1-10 March 2023. Page 5.

<sup>40</sup> 2018 UPR Working Group Report, paras 142.191-197

<sup>41</sup> Dubravka Šimonović, *Visit to Canada: Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, A/HRC/41/42/Add.1 (June 3, 2019), <https://digitallibrary.un.org/record/3840224?ln=en>. For specific recommendations relating to Indigenous women, see para. 96 and its sub-paragraphs; see also Dubravka Šimonović, “End of Mission Statement by Dubravka Šimonović,” UN, April 23, 2018, <https://www.ohchr.org/en/statements/2018/04/end-mission-statement-dubravka-simonovic-uk-2018-04-23>.

<sup>42</sup> Committee on the Elimination of Discrimination against Women, *Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination*, UN Doc CEDAW/C/OP.8/CAN/1, 10 March 2023, <https://digitallibrary.un.org/record/836103?ln=en> (see paras 13-20 for background on the Inquiry procedure).

Further, there is no effective coordination mechanism to oversee initiatives being implemented by different public agencies across levels of government.<sup>43</sup> FAFIA and the Native Women's Association of Canada testified at the IACHR in 2016 that there are no mechanisms in Canada for monitoring and evaluating government actions to implement the recommendations of the CEDAW Committee, the IACHR, or the HRC;<sup>44</sup> in 2023, there is still no measurable progress.

### II. The National Inquiry, 231 Calls for Justice, and Canada's National Action Plan

In 2016, Canada appointed a National Inquiry into Missing and Murdered Indigenous Women and Girls which issued its final report on June 3, 2019.<sup>45</sup> The National Inquiry found a “significant, persistent, and deliberate pattern of systemic racial and gendered human rights and Indigenous rights violations and abuses perpetuated historically and maintained today by the Canadian state.” It found that this is the cause of the disappearances, murders and violence experienced by Indigenous women and girls, and it is part of the slow-moving, decades-long genocide practiced by the Canadian state against Indigenous peoples.<sup>46</sup>

The Inquiry also found that there is no “accessible and reliable mechanism within the Canadian state” for Indigenous women and girls to “seek recourse and remedies for the violations of their domestic and international human rights and Indigenous rights.” The Inquiry found that the Canadian legal system does not hold the state and state actors accountable when they fail to meet domestic and international human rights obligations.<sup>47</sup>

On June 3, 2021, Canada released its National Action Plan to respond to the 231 Calls for Justice.<sup>48</sup> Notably, at the ceremony launching the Plan, Prime Minister Trudeau acknowledged that the violence against Indigenous women and girls constitutes genocide.<sup>49</sup> Reversing genocidal practices and policies requires immediate, urgent and comprehensive action.

However, the National Action Plan, together with the Federal Pathway,<sup>50</sup> provide statements of intent, and a catalogue of possible measures, but not the comprehensive, inter-governmental plan of action that is needed to end genocide. In contrast to the National Action Plan that was

<sup>43</sup>OAS, Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia*, OEA/Ser.L/V/II (2014), <http://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>.

<sup>44</sup> 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, <http://undocs.org/CEDAW/C/OP.8/CAN/1>.

<sup>45</sup> 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, [fafia-afai.org/wp-content/uploads/2016/10/Native-Womens-Association-of-Canada-and-FAFIA.pdf](http://fafia-afai.org/wp-content/uploads/2016/10/Native-Womens-Association-of-Canada-and-FAFIA.pdf).

<sup>46</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. June 2019. [National Inquiry]. <https://www.mmiwg-ffada.ca/final-report/>.

<sup>47</sup> Executive Summary of the National Inquiry into Missing and Murdered Indigenous Women and Girls. June 2019. [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive\\_Summary.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf). Page 60.

<sup>48</sup> Ibid.

<sup>49</sup> 2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQIA+ People. June 3, 2021. <https://mmiwg2splus-nationalactionplan.ca/>.

released, the National Inquiry, the IACHR, and the CEDAW Committee all agreed that the National Action Plan should include measurable goals and timetables, and mechanisms for intergovernmental co-ordination and monitoring. See Annex B for a comprehensive list of what is needed in a National Action Plan.

The Progress Report on the Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ People National Action Plan, issued in May 2022, includes an implementation plan among its “next steps.” According to the Progress Report this plan will include specific actions, expected outcomes, timelines, and resources; mechanisms and processes for national independent oversight and coordination; a clear definition of the roles and responsibilities of all governments and an accountability/results structure for the National Action Plan.<sup>51</sup>

This is clearly what is needed, but, four years after the National Inquiry tabled its findings and recommendations, we do not have it yet. So far we have expressions of good intent, but little more.

### III. Failure to Spend Allocated Funds to Address MMIWG

In its 2021 Budget, Canada allocated over \$2.2 billion to addressing the MMIWG crisis.<sup>52</sup> However, in 2022, Indigenous leadership stated that despite these promised funds, “we have yet to see changes on the ground that point toward transformative change. While there were broad commitments to address gender-based violence in Budget 2022, there were no additional funds specifically earmarked to address the disproportionate violence against Indigenous women and girls.”<sup>53</sup>

Furthermore, in 2023 it became clear that Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada had failed to spend billions of dollars on promised programs and services.<sup>54</sup> This failure clearly demonstrates the need for an actionable plan which effectively allocates resources and funds towards ending the MMIWG crisis.<sup>55</sup>

### IV. Conclusion

While Canada has made clear its good intentions in the National Action Plan, Canada has not made accountability and effective action a priority in addressing the crisis of missing and murdered Indigenous women and girls. Four years after the closing of the National Inquiry, and

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<sup>51</sup> Prime Minister's remarks at the launch of the National Action Plan on Missing and Murdered Indigenous Women, Girls and 2SLGBTQIA+ people. June 3, 2021. <https://pm.gc.ca/en/news/speeches/2021/06/03/prime-ministers-remarks-launch-national-action-plan-missing-and-murdered>.

<sup>52</sup> Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQIA+ People. June 3, 2021. <https://www.rcaanc-cirnac.gc.ca/eng/1622233286270/1622233321912>.

<sup>53</sup> Progress Report on the Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ People National Action Plan. May 23, 2022. <https://mmiwg2splus-nationalactionplan.ca/progress-reports>. Page 24.

<sup>54</sup> Olivia Stefanovich. “Federal budget lacked a plan to combat violence against Indigenous women, advocates say.” *Canadian Broadcasting Corporation*. May 2, 2021. <https://www.cbc.ca/news/politics/mmiwg-federal-budget-funding-genocide-finding-1.6002751>.

<sup>55</sup> First Nations Leadership Council. “First Nations Leadership Council Calls for Immediate Action to Address Colonial Violence Against First Nations Women and 2SLGBTQIA+ People.” June 3, 2022. <https://www.ubcic.bc.ca/fnlcr-immediate-action-to-address-colonial-violence-against-first-nations-women-and-2slgbtqiia>.

two years after the release of the National Action Plan, the crisis of missing and murdered Indigenous women and girls continues.<sup>56</sup>

### V. Recommendations

**That the Government of Canada, in coordination with provinces and territories:**

- **Immediately establish an Implementation Plan for the National Action Plan that includes specific actions, goals, timetables, resources, a definition of the roles of governments, and oversight and co-ordination mechanisms.**
- **Implement the recommendations of the CEDAW, other UN bodies, the IACHR and the National Inquiry that will immediately improve the daily lives of Indigenous women and girls' especially their health, safety and security, address their poor socio-economic conditions, and ensure specific supports for victims of violence.**
- **Undertake a review of Canada's discharge of its 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 police, lawyers, health care professionals, child welfare workers, and judges; due consideration must be given to the impact that police racism and sexualized violence has on women and girls, their families, communities, and Nations.**

## Misogyny, Racism, and Violence against Women in Canada's National Police Force

### I. Misogyny, Racism, and Violence against Women in the RCMP

The Royal Canadian Mounted Police (RCMP), Canada's national police force, is regularly violating the human rights of the women it employs and the women it is intended to protect. The RCMP is the principal police force for rural and northern Canada, the home of many of Canada's Indigenous Peoples.

Over the last decade, numerous reports from legal experts and human rights organizations have documented harassment of women Officers by their male colleagues in the RCMP, and violence against women by RCMP Officers in the communities that the force serves. This violence includes sexual assault, rape, and sexualized verbal abuse. In addition, reports from international, regional and domestic inquiries, as well as from journalists and civil society, have documented RCMP failures to protect women from violence by men in the community. All of these reports show that Indigenous women are particular targets of sexualized violence by

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<sup>56</sup> The Canadian Press. "Indigenous services, CIRNAC fail to spend \$5.6B from last year's budget." Aboriginal Peoples Television Network. January 30, 2023. <https://www.aptnnews.ca/national-news/indigenous-services-cirnac-fail-to-spend-5-6b-from-last-years-budget/>.

RCMP Officers, and, as the crisis of murders and disappearances reveals, their lives are especially endangered by RCMP failures to protect them.

The sexual harassment of female RCMP Officers by male RCMP Officers is a known and long-standing problem; there have been many complaints.<sup>57</sup> In 2020 Justice Bastarache, former Justice of the Supreme Court of Canada, issued a report entitled, *Broken Dreams, Broken Lives*, which provided his findings on the investigation arising from a class action suit joined by 3,086 women RCMP Officers.<sup>58</sup> Justice Bastarache found that sexual harassment is fostered and permitted by an institutional culture of misogyny, racism and homophobia operating at every level of the RCMP and in every jurisdiction.<sup>59</sup>

The Bastarache Report describes systemic misogyny, racism and homophobia that pervades the RCMP.<sup>60</sup> The Report found 131 cases of “outright rape,” sometimes occurring in situations where women were forced to engage in, or were incapable of consenting to, sexual activity.<sup>61</sup> Sexual assaults were also “more frequent than the Assessors could have imagined” and were perpetrated by RCMP Officers and RCMP doctors.<sup>62</sup>

Justice Bastarache concluded that the RCMP is not capable of changing itself from within, and that the “time has come for the Government of Canada to ask some hard questions about the structure and governance of federal policing.”<sup>63</sup>

It is evident, from many other reports, that the RCMP's culture of misogyny, racism, and homophobia affects not only the treatment of women who are employed by the RCMP, but also the treatment of the women whom the RCMP is intended to serve. The same “hard questions” that are raised by the RCMP's treatment of the women it employs are also raised by the RCMP's treatment of the women it polices.

A review of the evidence provided over the last decade in reports from legal experts and human rights organizations, including Human Rights Watch,<sup>64</sup> the Legal Services Board of Nunavut,<sup>65</sup>

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<sup>57</sup> Jackie McKay. “Indigenous leaders and MMIWG families want movement on Calls for Justice.” *Canadian Broadcasting Corporation*. February 17, 2023. <https://www.cbc.ca/news/indigenous/mmiwg-afn-calls-for-justice-1.6751083>.

<sup>58</sup> Native Women's Association of Canada. “Native Women's Association of Canada Annual Report Card of Government's National Action Plan to Address MMIWG and Violence Finds (Very) Little Progress; Nanos Survey Shows Canadians Agree.” June 3, 2022. <https://nwac.ca/media/2022/06/nwac-annual-report-card-of-governments-national-action-plan-to-address-mmiwg-and-violence-finds-very-little-progress-nanos-survey-shows-canadians-agree>.

<sup>59</sup> Michel Bastarache, *Broken Dreams, Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP, Final Report on the Implementation of the Merlo Davidson Settlement Agreement* (Ottawa: Merlo Davidson Settlement, November 11, 2020), <https://www.rcmp-grc.gc.ca/wam/media/4773/original/8032a32ad5dd014db5b135ce3753934d.pdf>. pages 33 - 35.

<sup>60</sup> Bastarache, *Broken Dreams, Broken Lives*, page 33.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, ii, 56.

<sup>63</sup> *Ibid.*, 48.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*. February 2013. <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>.

Pauktutit Inuit Women of Canada,<sup>66</sup> the CEDAW Committee,<sup>67</sup> the Inter-American Commission on Human Rights,<sup>68</sup> the Oppal Inquiry,<sup>69</sup> and the National Inquiry into Missing and Murdered Indigenous Women and Girls<sup>70</sup> reveal a pattern and practice of sexualized violence against Indigenous women and girls by Officers of the RCMP, including harassment, sexual assault, rape, excessive use of force, unwarranted strip-searching, and sexualized verbal abuse. In addition, reports document RCMP failures to protect women, especially Indigenous women and girls, from violence by men in the community - including from sexual assault, domestic violence, human trafficking, and murder.<sup>71</sup>

### II. Violence against Indigenous Women and Girls

Indigenous women and girls face disproportionately high levels of violence, and police violence, compared to other women in Canada. In 2013, Human Rights Watch (HRW) published a report examining violence committed by RCMP members against Indigenous women and girls across ten cities in Northern BC.<sup>72</sup> Interviewees reported racist and sexist abuse, violence, and rape. These acts occurred against a backdrop of police apathy towards missing Indigenous women and Indigenous women who are victims of domestic violence. A 2017 Human Rights Watch report on policing in Saskatchewan found that physical violence, mistreatment in police custody, and strip searches of Indigenous women occurred in every community that was investigated.<sup>73</sup> In 2020 the Legal Services Board of Nunavut reported sexism, racism and excessive use of force by the RCMP, and

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<sup>66</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*. February 2013. <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>.

<sup>67</sup> Thomas Rohner, "Nunavut leaders calling for systematic review of RCMP service in the territory." *Canadian Broadcasting Corporation*, June 9, 2020. <https://www.cbc.ca/news/canada/north/nunavut-leaders-systematic-rcmp-review-1.5603222>. Legal Services Board of Nunavut, Letter: "Re: Request for Review of RCMP in Nunavut." June 13, 2019.

<https://www.documentcloud.org/documents/6937877-ATIPP-LSB1-Compressed.html>. Legal Services Board of Nunavut, Letter: "Re: Two Recent Incidents of Strip Searching Women by RCMP in Nunavut." January 23, 2020. <https://www.documentcloud.org/documents/6937878-ATIPP-LSB2.html>.

<sup>68</sup> Pauktutit Inuit Women Canada and Dr. Elizabeth Comack, *Addressing Gendered Violence against Inuit Women: A review of police policies and practices in Inuit Nunangat*. January 31, 2020. <https://pauktutit.ca/wp-content/uploads/Pauktutit-Addressing-Gendered-Violence-English-Full-Report-1.pdf>.

<sup>69</sup> Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. March 30, 2015. <https://digitallibrary.un.org/record/836103?ln=en>.

<sup>70</sup> Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*. December 21, 2014. <https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>.

<sup>71</sup> The Honourable Wally T. Oppal, QC Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry*. November 19, 2012. <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/forsaken-es.pdf>.

<sup>72</sup> National Inquiry Final Report, June 2019. <https://www.mmiwg-ffada.ca/final-report/>.

<sup>73</sup> For FAFIA's full research report on this issue, please see "The Culture of the RCMP: misogyny, racism, and violence against women in Canada's national police force." April 2022. Shivangi Misra and Ashley Major. <https://fafia-afai.org/en/a-report-on-the-toxic-culture-of-misogyny-racism-and-violence-in-the-rcmp/>. See also the reporting of journalists Rachel Mendleson and Steve Buist documenting over 600 incidents of police misconduct since the signing of the Canadian Charter of Rights and Freedoms, <https://www.thestar.com/news/police-charter-rights-violations.html>. Furthermore, journalist Amanda Follett Hosgood has documented that in British Columbia, Canada, police-involved deaths have risen 700% in the last decade, including 64 in 2022, [https://thetyee.ca/News/2023/02/15/Rising-Police-Involved-Deaths/?utm\\_source=twitter&utm\\_medium=social&utm\\_content=031723-1&utm\\_campaign=editorial](https://thetyee.ca/News/2023/02/15/Rising-Police-Involved-Deaths/?utm_source=twitter&utm_medium=social&utm_content=031723-1&utm_campaign=editorial).

prevalent police abuse, particularly against Inuit women.<sup>74</sup>

Key reports have documented a pattern of police (RCMP and other police forces) failures regarding missing and murdered Indigenous women and girls, including the 2012 report of the BC Missing Women Commission of Inquiry,<sup>75</sup> and the 2014 Report of the IACHR, *Missing and Murdered Indigenous Women and Girls in BC, Canada*.<sup>76</sup>

The National Inquiry into Missing and Murdered Women and Girls reported major concern about RCMP misogyny, racism and sexualized violence against Indigenous women and girls, as well as about RCMP failures to properly investigate exploitation, abuse, disappearances, and killings.

The National Inquiry's Final Report highlights a key fact: since its creation, the RCMP has been known for its abuse of, and discrimination against, Indigenous women and girls. The Northwest Mounted Police (NWMP), the predecessor to the RCMP, whose task was to assert "colonial control" over Indigenous peoples,<sup>77</sup> actively engaged in practices that sexualized, dehumanized, and villainized Indigenous women.<sup>78</sup> Allegations of NWMP misconduct and violence against Indigenous women and girls were ignored and often discredited because the police investigated their own members - a practice that continues to this day in the RCMP.<sup>79</sup>

Additionally, Indigenous land defenders and human rights advocates, many of whom are women, are vilified, surveilled, criminalized, and subjected to violence by the RCMP.<sup>80</sup> Many have been assaulted, arrested, and forcibly removed from their territories for engaging in peaceful land defence.<sup>81</sup> Presently, an investigation is being led into the actions of a special RCMP unit that polices resource extraction protests, a unit which is the subject of lawsuits and accusations of violations of the *Canadian Charter of Rights and Freedoms*, as well as excessive

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<sup>74</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013). <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women#>.

<sup>75</sup> Human Rights Watch, *Submission to the Government of Canada on Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence*. June 2017. [https://www.hrw.org/sites/default/files/supporting\\_resources/canada\\_saskatchewan\\_submission\\_june\\_2017.pdf](https://www.hrw.org/sites/default/files/supporting_resources/canada_saskatchewan_submission_june_2017.pdf).

<sup>76</sup> Thomas Rohner, "Nunavut leaders calling for systematic review of RCMP service in the territory." *Canadian Broadcasting Corporation*. June 9, 2020. <https://www.cbc.ca/news/canada/north/nunavut-leaders-systematic-rcmp-review-1.5603222>; Legal Services Board of Nunavut, Letter: "Re: Request for Review of RCMP in Nunavut." June 13, 2019. <https://www.documentcloud.org/documents/6937877-ATIPP-LSB1-Compressed.html>; Legal Services Board of Nunavut, Letter: "Re: Two Recent Incidents of Strip Searching Women by RCMP in Nunavut." January 23, 2020. <https://www.documentcloud.org/documents/6937878-ATIPP-LSB2.html>.

<sup>77</sup> British Columbia, Missing Women Commission of Inquiry, Wally Oppal, *Forsaken: The Report of the Missing Women Commission of Inquiry* (Victoria: Distribution Centre-Victoria, 2012), <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/forsaken-es.pdf>. This Inquiry examined the police response to the disappearances and murders of women from Vancouver's Downtown Eastside, many of whom were killed by Robert Pickton.

<sup>78</sup> Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women*, para. 6.

<sup>79</sup> National Inquiry, vol. 1a, 253.

<sup>80</sup> *Ibid.*, 254.

<sup>81</sup> *Ibid.*, 257; Pam Palmater, "Brenda Lucki Must Go," *Macleans*, June 18, 2020, <https://www.macleans.ca/opinion/brenda-lucki-must-go/>.

force and racism.<sup>82</sup>

### III. 'Unfounding' of Sexual Assault Allegations

A key problem in Canada is the police practice of deeming sexual assault allegations to be “unfounded”. Although documented by researchers over many decades,<sup>83</sup> it was not until 2017, when an investigation of over 870 police forces across the country found that one in every five sexual assault allegations is deemed baseless, or “unfounded”,<sup>84</sup> that this issue received national attention. “Unfounding” at alarmingly high rates continues, despite the fact that research shows that false allegations are rare.<sup>85</sup> For the RCMP, the overall unfounded rate of sexual assault allegations was 17%,<sup>86</sup> but unfounded rates for some RCMP detachments were as high as 40%.<sup>87</sup> The over-classification of cases as unfounded stems from entrenched sexist attitudes and myths, and from systemic failures by police to deal with the realities of sexual assault and victim behaviours.<sup>88</sup>

At this time, there is no consistent and reliable procedure in place for reviewing sexual assault complaints deemed unfounded by the RCMP.

### IV. Ignoring Violence against Women: Femicide and Lack of RCMP Response

In April 2020, Gabriel Wortman posed as an RCMP Officer<sup>89</sup> and killed twenty-two people in Portapique, Nova Scotia. This mass shooting, which was the worst in Canada's history, was labelled a “femicide,”<sup>90</sup> and highlighted connections between intimate partner violence and

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<sup>82</sup> Justin Brake, “Women Speak Out Against Criminalization of Land Defenders, Water Protectors,” *APTN National News*, August 3, 2018, <https://www.aptnnews.ca/national-news/women-speak-out-against-criminalization-of-land-defenders-water-protectors/>; Matt Simmons, “‘Localized Harassment’: RCMP Patrol Wet’ suwet’ en Territory Dispute UN Calls for Withdrawal,” *The Narwhal*, February 22, 2021, <https://thenarwhal.ca/rcmp-wetsuweten-territory-february-2021/>.

<sup>83</sup> See concerns raised by the Committee on the Elimination of Racial Discrimination regarding Canada's treatment of Indigenous land defenders: Committee on the Elimination of Racial Discrimination, CERD/EWUAP/102<sup>nd</sup> session/2020/MJ/CS (Geneva: United Nations, November 24, 2020), [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_ALE\\_CAN\\_9296\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_9296_E.pdf).

<sup>84</sup> Brett Forester. “Watchdog opens probe into RCMP unit that polices resource standoffs in B.C.” *Canadian Broadcasting Corporation*, March 9, 2023, <https://www.cbc.ca/news/indigenous/crc-cirg-watchdog-systemic-investigation-1.6773070>.

<sup>85</sup> See for example the extensive writing by scholars Lorenne Clark, Debra Lewis, Holly Johnson, Constance Backhouse, Blair Crew and Teresa DuBois, amongst others. Additionally, several chapters in the foundational book *Sexual Assault in Canada* explore in depth the issues of unfounding of sexual assault allegations and RCMP misconduct and violence. See Elizabeth Sheehy, ed., *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012).

<sup>86</sup> Robyn Doolittle, “Unfounded: Why Police Dismiss 1 in 5 Sexual Assault Claims as Baseless,” *Globe and Mail*, February 3, 2017, <https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/>.

<sup>87</sup> *Ibid.*; see also Gary Mckenna, “Why Were 22% of Tri-City Sex Assaults Called ‘Unfounded’ in 2018?,” *Tri-City News*, August 13, 2019, [www.tricitynews.com/local-news/why-were-22-of-tri-city-sex-assaults-called-unfounded-in-2018-3105197](http://www.tricitynews.com/local-news/why-were-22-of-tri-city-sex-assaults-called-unfounded-in-2018-3105197).

<sup>88</sup> *Ibid.* The article notes that data on unfounding of sexual assault cases was difficult to assess because Statistics Canada stopped tracking this information in 2003 due to cases being misclassified by police.

<sup>89</sup> Jen St. Denis and Alissa Thibault, “Sexual Assault Survivors Rally at RCMP Detachment to Protest Dismal ‘Unfounded’ Rate,” *CTV News*, November 23, 2019, <https://bc.ctvnews.ca/sexual-assault-survivors-rally-at-rcmp-detachment-to-protest-dismal-unfounded-rate-1.4699301>.

<sup>90</sup> *Ibid.*

mass violence.<sup>91</sup>

Prior to the attack, the RCMP knew about Wortman's threats against his partner and others, his actual violence towards his partner, and his extensive collection of weapons.<sup>92</sup> Women's rights advocates called for a public inquiry into the shooting.<sup>93</sup> The Mass Casualty Commission was appointed in October 2020 and issued its Final Report on March 30, 2023.<sup>94</sup> The Commission found profound failures by the RCMP in the handling of this mass homicide, which included failure to treat complaints about Gabriel Wortman's known violence against his domestic partner and his illegal gun ownership with the seriousness warranted.<sup>95</sup> The Commission recommended that "[t]he federal minister of public safety commission the in-depth, external, and independent review of the RCMP recommended by Mr. Bastarache in his 2020 report *Broken Dreams, Broken Lives*." <sup>96</sup>

### V. Complaints against the RCMP

The ineffectiveness of the Civilian Review and Complaints Commission for the RCMP (CRCC) as a complaint and oversight mechanism for the RCMP is widely acknowledged. In light of the record of RCMP violence against women, and RCMP failures to prevent violence against women, the weakness and inadequacy of the CRCC constitutes a failure on the part of Canada to ensure that women enjoy equal protection of the law and have access to effective remedies when that right is violated.<sup>97</sup>

Reports from international expert bodies and national NGOs have identified the weaknesses of Canadian mechanisms for review and response to police failures and violence.<sup>98</sup> They recommend that Canada create independent civilian oversight mechanisms capable of holding

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<sup>91</sup> Advocate Johannah Black asserts that Workman's RCMP guise is relevant because of the "white, male entitlement" and the violence against racialized peoples that has characterized the RCMP from its inception to the present day. See Johannah Black, "We're Still Calling it Femicide: the Portapique Shooting has Exposed the Damage White, Male Entitlement Can Do." *The Coast* April 18, 2021. [www.thecoast.ca/halifax/were-still-calling-it-femicide/Content?oid=26237962](http://www.thecoast.ca/halifax/were-still-calling-it-femicide/Content?oid=26237962).

<sup>92</sup> Sophia Ankel, "Evidence Mounts that Canada's Worst-Ever Mass Shooter was a Woman-Hater and Misogyny Fuelled his Killing Spree that Left 22 Dead," *Business Insider*, May 16, 2020, [www.businessinsider.com/ex-neighbor-nova-scotia-gunman-said-she-reported-domestic-violence-2020-5](http://www.businessinsider.com/ex-neighbor-nova-scotia-gunman-said-she-reported-domestic-violence-2020-5).

<sup>93</sup> Black, "We're Still Calling it Femicide."

<sup>94</sup> Ibid.

<sup>95</sup> Canadian Femicide Observatory for Justice & Accountability, *Statement Concerning the Nova Scotia Mass Killings*, April 23, 2020, [https://womenshomelessness.ca/wp-content/uploads/CFJA-STATEMENT\\_APRIL-23-2020.pdf](https://womenshomelessness.ca/wp-content/uploads/CFJA-STATEMENT_APRIL-23-2020.pdf); Alex Cooke,

"Advocates Decry Lack of Feminist Lens in N.S. Shooting Review." *CBC News*. July 24, 2020.

<https://www.cbc.ca/news/canada/nova-scotia/ns-shooting-review-feminist-analysis-1.5661593>; Steve McKinley, "Why a Feminist Lens Could be Key to Understanding the Nova Scotia Mass Shooting." *Toronto Star*. July 21, 2020.

<https://www.thestar.com/news/canada/2020/07/21/why-a-feminist-lens-could-be-key-to-understanding-the-nova-scotia-mass-shooting.html>; Jennifer Henderson, "Petition Calls for Mass Murder Inquiry with Feminist Lens." *Halifax Examiner*.

July 14, 2020. <https://www.halifaxexaminer.ca/featured/petition-calls-for-mass-murder-inquiry-with-feminist-lens/>, Michael Tutton, "It's Painful,' Says Nova Scotia MP of String of Abusive Calls, Veiled Threats," *CTV News*, July 6, 2020,

<https://atlantic.ctvnews.ca/it-s-painful-says-nova-scotia-mp-of-string-of-abusive-calls-veiled-threats-1.5012704>.

<sup>96</sup> Mass Casualty Commission, Final Report, March 30, 2023, <https://masscasualtycommission.ca/final-report/>.

<sup>97</sup> Mass Casualty Commission, Executive Summary, March 30, 2023,

<https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-Executive-Summary.pdf>.

<sup>98</sup> Ibid. at p. 258.

officials to account, through “administrative, disciplinary or criminal measures.”<sup>99</sup>

### VI. Conclusion

International treaties articulate the obligations of governments to ensure that they do not engage in discrimination.<sup>100</sup> This includes ensuring that state actors do not discriminate against women, and do not engage in violence against them. In addition, Canada and the RCMP have an obligation of due diligence to prevent, investigate, prosecute and remedy violence against women. Canada, and the RCMP, are not discharging these obligations.

### VII. Recommendations

**That the Government of Canada:**

- **Immediately initiate the independent, in-depth review of the RCMP called for by the Mass Casualty Commission, the Bastarache Report, the UN Special Rapporteur on violence against women,<sup>101</sup> and Indigenous women, with the goal of determining whether and how radical changes can be made to RCMP oversight, transparency, accountability, structure, culture, and practices.<sup>102</sup>**
- **Ensure that the independent review scrutinizes structural racism in the RCMP, RCMP treatment of Black Canadians, and of Canadians experiencing mental health crises.**
- **Implement the recommendations of the Mass Casualty Commission and the 52 “stop-gap” recommendations of the Bastarache Report and establish an oversight body for implementation.**
- **Take immediate steps to investigate, prosecute and make reparations for RCMP Officer-perpetrated violence against Indigenous women in an open and transparent manner, with independent oversight including Indigenous women.**
- **Replace the Civilian Review and Complaints Commission for the RCMP and the External Review Committee with a genuinely independent and adequately resourced oversight body that can investigate and report publicly on all complaints against the RCMP and hold the institution and individual RCMP Officers accountable for individual and systemic failures, neglect, harassment, abuse, misconduct, assault, and violence against**

<sup>99</sup> One example of this is the current investigation into years-old RCMP misconduct in Prince George. Minister’s statement about independent investigation into Prince George RCMP. March 8, 2023.

<https://news.gov.bc.ca/releases/2023PSSG0015-000293>.

<sup>100</sup> Jon Hernandez, “B.C. Civil Liberties Association Heads to Court over RCMP Complaint Delays.” *CBC News*, September 10, 2021. <https://www.cbc.ca/news/canada/british-columbia/b-c-civil-liberties-association-heads-to-court-over-rcmp-complaint-delays-1.6170329>.

<sup>101</sup> Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women*, para. 314. See also Committee on the Elimination of Discrimination against Women, *Report of the Inquiry Concerning Canada*, para. 217(k), (l); Human Rights Watch, *Those Who Take Us Away*, iv; Šimonović, *Visit to Canada*, (z) (iv).

<sup>102</sup> Article 2 of CEDAW says, in part: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...] (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.

women.

- Ensure that the focus and goal of any reform is to make the RCMP capable of meeting Canada's, and the RCMP's, human rights obligations to ensure that public officials do not perpetrate violence against women, and that they prevent, investigate, prosecute, and provide effective remedies for violence against women.

### Annex A: Court Decisions, UN Petitions, and UN Treaty Body and UPR Recommendations on Canada's Indian Act Sex Discrimination

#### Decisions from Canadian Courts regarding Indian Act Sex Discrimination

*Re Lavell and Attorney-General of Canada* (1971), 22 DLR (3d) 182, [1972] 1 OR 390, [1971 CanLII 526](#) (ON SC); *Re Lavell and Attorney-General of Canada* (1971), 22 DLR (3d) 188, [1971] 1 FC 347, [1971 CanLII 1984](#) (FCA); *Bédard v. Isaac et al.* (1971), 25 DLR (3d) 551, [1972] 2 OR 391, [1971 CanLII 601](#) (ON SC); *Attorney General of Canada v. Lavell*, [\[1974\] SCR 1349](#)

*Perron v. Canada (Attorney General of)* (2003), [105 CRR \(2d\) 92](#) (Ont. Sup. Ct.)

*Sawridge Band v. Canada*, [2004 FCA 16](#)

*Mclvor v. The Registrar, Indian and Northern Affairs Canada*, [2007 BCSC 827](#); *Mclvor v. Canada (Registrar of Indian and Northern Affairs)*, [2009 BCCA 153](#); *Sharon Donna Mclvor and Charles Jacob Grismer v. Registrar, Indian and Northern Affairs Canada and Attorney General of Canada*, [2009 CanLII 61383](#) (SCC)

*Descheneaux c. Canada (Procureur Général)*, [2015 QCCS 3555](#)

*Gehl v. Attorney-General of Canada* (2001), [88 CRR \(2d\) 366](#) (Ont. S.C.); *Gehl v. Attorney-General of Canada*, [2015 ONSC 3481](#)

*Matson et al. v. Indian and Northern Affairs Canada*, [2013 CHRT 13](#); *Canada (Human Rights Commission) v. Canada (Attorney General)*, [2015 FC 398](#); *Canada (Human Rights Commission) v. Canada (Attorney General)*, [2016 FCA 200](#); *Canadian Human Rights Commission v. Canada (Attorney General)*, [2018 SCC 31](#), [\[2018\] 2 S.C.R. 230](#)

#### UN Decisions on Petitions regarding Indian Act Sex Discrimination

*Lovelace v. Canada*, Communication No. 24/1977 (30 July 1981), U.N. Doc. CCPR/C/13/D/24/1977

*Mclvor v. Canada*, [CCPR/C/124/D/2020/2010](#)

*Matson v. Canada*, [CEDAW/C/81/D/68/2014](#)

### **UN treaty body and UPR recommendations on elimination of sex discrimination from the Indian Act**

Human Rights Committee, Concluding Observations on Canada CCPR/C/79/Add.105, 7 April 1999, para 19; Human Rights Committee, Concluding Observations on Canada, CCPR/C/CAN/CO/5, 20 April 2006, para 22; Human Rights Committee, Concluding Observations on Canada, C/CAN/CO/7 (2015), paras 17 - 18; CERD, Concluding Observations on Canada, CERD/C/CAN/CO/18, 25 May 2007, para. 15; CERD Concluding Observations on Canada, CERD/C/CAN/CO/19-20, 9 March 2012, para. 18;

CEDAW, Report of 28<sup>th</sup> (13-31 January 2003) and 29<sup>th</sup> (30 June-18 July 2003) Sessions, A/58/38 supp, paras 361-362; CEDAW, Concluding Observations on Canada, CEDAW /C/CAN/CO/7, 7 December 2008, paras 17-18; CEDAW, 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, CAN/CEDAW/C/O P.8/CAN/1 (2015), at para 219(e); CEDAW, Concluding Observations on Canada, CEDAW/C/CAN/CO/8-9, 18 November 2016, para 13;

Committee on Economic, Social and Cultural Rights, E/C.12/CAN/CO/4 and E/C.12/CAN/CO/5, 22 May 2006, paras 17 and 45; Committee on Economic Social and Cultural Rights, E/C.12/CAN/CO/6, 23 March 2016, para 22 (b);

Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/24/11, 28 June 2013, para 128.59; Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/39/1, 11 July 2018, para 142.78, 142.79, 142,.80.

## Annex B. Fully eliminating the remaining sex discrimination in the *Indian Act*

### 1) Removal of the bar to compensation for discrimination

Bill C-38, the newly proposed amendment to the *Indian Act*, does not remove the legal bars to compensation for First Nations women and their descendants for the harms caused by the sex discrimination in the *Indian Act*. The bars to compensation, first introduced in 1985, constitute blatant sex discrimination, contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*.<sup>103</sup> The bars to compensation also contravene the right of Indigenous women and their descendants to redress for forced assimilation, which they are guaranteed in Article 8(2)(d) of the *UN Declaration on the Rights of Indigenous Peoples*.

FAFIA recommends that the bars to compensation be removed, and that First Nations women and their descendants be compensated for the harms of sex discrimination, including the harm that not treating them as equal parents, able to transmit status on an equal footing with their male counterparts, has done to women in their role as principal conveyors of culture and language.

### 2) Removal of the 6(1)(f), 6(2), the second generation cut-off, and the two-parent rule

The proposed amendment does not remove s. 6(2), the second generation cut-off and the two-parent rule that were introduced to the *Indian Act* in 1985. Instead of removing the discrimination against women by permitting women to transmit status as one parent as men had been able to do since 1876, Bill C-31 introduced a two-parent rule for the transmission of status for both women and men.

In addition, women whose status was reinstated in 1985, were only allowed to pass on their status for one generation. Because the children of the women who married out, were deemed to have only one Indian parent, these children were given 6(2) status. Section 6(2) provides that someone who has only one status parent will get status for their lifetime. However, the 6(2) person has to have children with another status person in order to ensure that his or her children have status. If a 6(2) person has a child with a non-status person that child will have no status. This is called the 'second generation cut-off.'

The second generation cut-off and the two-parent rule perpetuate discrimination against women in three ways: 1) these rules penalize women if the father of their child is unknown or unnamed because a woman with 6(2) status cannot transmit status in her own right; 2) they carry forward the original sex discrimination because the women who married out who were reinstated in 1985 were considered to be a one-Indian-parent family, while the men who married out and endowed their status on their wives and children were considered to be two-Indian parent families. This means that it is more likely that the descendants of Indian women-led families will lose entitlement to status sooner than descendants of Indian men-led families;

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<sup>103</sup> Dubravka Šimonović, *Visit to Canada: Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, A/HRC/41/42/Add.1 (Geneva: United Nations, June 3, 2019), <https://digitallibrary.un.org/record/3840224?ln=en>

and 3) because of the rates of out-marriage or out-parenting, these rules construct a program of extinction and genocide.

The restrictive two-parent rule continues Canada's program of forced assimilation by legally defining out of the pool of 'Indians' those with only one 'Indian' parent. Demographer Stewart Clatworthy predicts that in three or four generations over half of Indigenous individuals in Canada will not be entitled to status.<sup>104</sup> This means they will not be deemed by the Government of Canada to be First Nations people who are owed recognition and fiduciary duties, and the benefits of status.

The removal of the two-parent rule is mandated by Article 8 of the *UN Declaration*, which sets out the right of Indigenous peoples not to be forcibly assimilated, and to redress for forced assimilation. Article 44 guarantees this right equally to Indigenous women and men.

To correct the discrimination caused by the 1985 6(1)(a) – 6(1)(c) hierarchy in combination with the imposition for the first time of a two-parent rule for transmission of status, which treated the women as though they were already on the same footing as men when they were not, FAFIA recommends amending the *Indian Act* to instate a one parent rule for both male and female parents from 1985 onwards.<sup>105</sup> This is what should have been done to correct inequality in 1985 and was not.

### 3) Addressing Pre and Post 1985 Birth and Marriage Dates

In some families, siblings with the same birth parents, have full section 6(1)(a) status or no status depending on whether they were born before or after April 17, 1985. Similar anomalies arise because of the date of marriage of the parents, whether before or after April 17, 1985. This '1985 cut-off' was found to be discriminatory by CEDAW in its ruling in *Matson v. Canada*.<sup>106</sup> A CEDAW Committee member, Ms. Corinne Dettmeijer-Vermeulen, in testimony before the Senate Committee on Aboriginal Peoples in May 2022 regarding the CEDAW Committee's decision, stated that "even if not currently based on the gender of the descendants themselves, it perpetuates in practice the differential treatment of descendants of previously disenfranchised Indigenous women."<sup>107</sup> The CEDAW Committee directed Canada to "[a]mend its legislation... to address fully the adverse effects of the historical gender inequality

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<sup>104</sup> Pam Palmater, "Canada Should Declassify, Deconstruct, and Defund the RCMP." *Canadian Dimension*. June 15, 2020. <https://canadiandimension.com/articles/view/declassify-deconstruct-and-defund-the-rcmp>.

<sup>105</sup> Canadian Charter of Rights and Freedoms. (10 March 2023) online, <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/pdf/charter-poster.pdf>

<sup>106</sup> Spolnik, M. (2021). The Second-Generation Cut-Off: Effect on Indigenous People in Canada, at p. 18, (Unpublished master's project). University of Calgary, online: <http://hdl.handle.net/1880/114210>.

<sup>107</sup> Making this change will have various implications: 1) the 6(1)(f) category will need to be eliminated along with the 6(2) category; 2) the unstated and unknown paternity provision, and the 'Gehl provision' will become unnecessary; 3) applications that were made under the unknown and unstated paternity provision and denied should be reviewed, and status should be awarded where the mother should have been able to transmit status in her own right. Similarly, refusals of status to illegitimate children of status mothers under earlier provisions, where objections were made, should also be reviewed, where possible; 4) implementing changes in status categories will need to be planned for, widely publicized, and adequately resourced by the Government of Canada.

in the *Indian Act* ....including by eliminating cut-off dates in the registration provisions and taking all other measures necessary to provide registration to all matrilineal descendants on an equal basis to patrilineal descendants.”<sup>108</sup> The 1985 cut-off date also causes discrimination on the basis of age, family and marital status.

As with the issue of unknown and unstated paternity, this discrimination would be cured by establishing a one parent rule.

#### **4) Addressing the issue of Indian status being denied to those who took scrip (Métis)**

The proposed amendment does not address the issue of Indian status being denied to those who were considered ‘half-breed’ (now referred to as Métis) and took scrip.<sup>109</sup>

There are likely to be women who were ‘half-breeds’ who took scrip, or who married ‘half-breeds’ who took scrip, who would have been entitled to Indian status, had First Nations women been entitled to status in their own right as First Nations men were from 1876. It should be clarified that women who would otherwise be entitled to Indian status under *Bill S-3* should not be denied status because a head of household accepted scrip.

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<sup>108</sup> *Matson v. Canada*, *supra* note 3.

<sup>109</sup> *Make It Stop!* at 27.

## Annex C. Essential Elements of an Effective National Action Plan to end the Crisis of Missing and Murdered Indigenous Women and Girls

FAFIA submits that the National Action Plan should have:

- Measurable goals and timetables for implementation;
- Be co-ordinated among federal, provincial, and territorial governments so that there is an agreed nation-wide plan for goals, timetables, measures, programs, and resources;
- Be supported by resources dedicated to capacity building, sustainability, and long-term solutions, and by use of the federal spending power to incentivize and support action by provincial and territorial governments;
- Have infrastructure that ensures that Indigenous women, their representatives and advocates, are centrally engaged in the design of measures and of implementation strategies; and
- Have a monitoring mechanism - independent of the government of Canada - to monitor the steps taken and effectiveness towards ending this genocide.

FAFIA notes that the National Action Plan does not sufficiently address:

- The urgent safety of Indigenous women and girls, including the need for appropriate emergency services;
- The social and economic disadvantage of Indigenous women and girls;
- The legacy and continuation of *Indian Act* sex discrimination, and the need to bring First Nations women and their descendants back into their communities as equal members and participants;
- Changes needed to child welfare systems in all jurisdictions;
- Police violence against Indigenous women and girls, and police failures to protect Indigenous women and girls;
- Bias in the justice system;
- Overcriminalization and incarceration of Indigenous women and girls;
- Lack of adequate services, including legal aid, and shelters;
- Supports for families of murdered and disappeared Indigenous women and girls, including supports for re-opening cold cases, and prosecutions; and
- Resources for Indigenous women and their organizations so that they can participate, with stable support, in the transformation of institutional practices and policies.

### Annex D. Submitters

#### Canadian Feminist Alliance for International Action (FAFIA)

The Canadian Feminist Alliance for International Action is the principal submitter of this report. FAFIA is an alliance of more than sixty Canadian women's organizations whose mission is to ensure that Canada fully realizes the rights of women and girls that are set out in the international and regional human rights treaties it has ratified.

Contact: Canadian Feminist Alliance for International Action  
Shelagh Day, Chair, Human Rights Committee  
9-2020 Lanthier Drive  
Suite #228  
Orleans, ON K4A 3V4  
Tel: +1 (604) 872-0750  
Web: [www.fafia-afai.org](http://www.fafia-afai.org) // @fafiaafai  
Email: [shelagh.day@gmail.com](mailto:shelagh.day@gmail.com)

#### Justice For Girls (JFG) (<http://www.justiceforgirls.org/>)

Justice For Girls (JFG) promotes social, economic and environmental justice and an end to violence, poverty and racism in the lives of teenage girls who live in poverty in Canada. JFG fights for social justice and stands beside young women to provide support and resources so that girls can act on their own behalf to create personal and social change. JFG uses knowledge of institutions, such as the criminal justice and child welfare systems, to assist young women in their daily struggles with violence, poverty and racism.

JFG has extensive experience with the United Nations human rights system, and has maintained Special Consultative Status with the United Nations Economic and Social Council since 2009.

Contact: Sue Brown, Director & Staff Lawyer  
Email: [info@justiceforgirls.org](mailto:info@justiceforgirls.org); [sue@justiceforgirls.org](mailto:sue@justiceforgirls.org)  
Phone: 1 (604) 785 7063  
#250- 997 Seymour St.  
Vancouver, BC  
Canada  
V6B 3M1

#### Dr. Pamela Palmater

Dr. Pamela Palmater LL.B, LL.M, Ph.D, is a Mi'kmaw citizen and member of the Eel River Bar First Nation in northern New Brunswick. She has been a practicing lawyer for 20 years and is

currently a Full Professor and the Chair in Indigenous Governance at Toronto Metropolitan University. She is an expert on Indigenous law and policy, the author of three books, and a public educator and webcaster. She is a member of the Indian Act Sex Discrimination Working Group, and has been active in the United Nations human rights system, including by making presentations to events organized by the Committee on the Elimination of Discrimination against Women, and the Special Rapporteur on violence against women, its causes and consequences.

Contact: Dr. Pamela Palmater

Email: [ppalmater@torontomu.ca](mailto:ppalmater@torontomu.ca)

Website: <https://pampalmater.com/>