



Canadian Journal of Women and the Law

**The National Inquiry on Murders and Disappearances of
Indigenous Women and Girls**

**Recommendations
from the Symposium on**

***Planning for Change – Towards a National Inquiry and an
Effective National Action Plan***

Table of Contents

Background

1. Scope and Design of the Inquiry
2. Goals of the Inquiry
3. Analytical Framework
 - a) Indigenous Laws and Legal Orders
 - b) Indigenous Law Lodges
4. Human Rights Approach
5. A National Inquiry
6. Harms to Families and Communities
7. Systemic Focus
 - a) Socio-Economic Marginalization
 - b) Sexual Violence
 - c) Police and Justice System
8. Data Collection
9. Independence
10. Leadership
11. Phases, Components, Capacities of an Inquiry
 - a) Review of Extant Recommendations
 - b) Scrutiny of Systemic Discrimination
 - c) Independent Mechanism for Review of Individual Cases
 - d) Engagement of Different Stakeholders
 - e) Different Kinds of Hearings
 - f) Public Education Component and Inquiry Process
 - g) Formulation of a Plan

h) Monitoring Implementation

Consolidated Recommendations

Background

On January 30 and 31, 2016, the Native Women's Association of Canada, the Canadian Feminist Alliance for International Action, and the Canadian Journal of Women and the Law convened a Symposium in Ottawa to engage in dialogue about the upcoming national inquiry on the murders and disappearances of Indigenous women and girls (MMIWG). Forty Indigenous women leaders, family members of murdered and disappeared women, academics and allies were joined by six human rights experts from the United Nations and the Inter-American Commission on Human Rights.¹ This document is distilled from presentations and dialogue at the Symposium.

This is a consensus document. The group was largely in agreement with the principles put forward. A few women did not agree fully with all aspects of these recommendations. We have attempted to capture their concerns in this document. This document does not purport to deal exhaustively with all aspects of the inquiry. Other areas of consideration include: how to incorporate the voices and experiences of young, elderly, disabled, and LGBTQ2S Indigenous women into the inquiry.

1. Scope and Design of the Inquiry

The inquiry must be focused on racialized and sexualized violence against Indigenous women and girls that is perpetrated by both Indigenous and non-Indigenous men, and by representatives of the state. It should be focused on murders and disappearances of Indigenous

¹ The human rights experts were: Barbara Bailey, Vice-Chair of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee); Ruth Halperin-Kaddari, Member of the CEDAW Committee and Chair of the Working Group on Follow-up to Inquiries; Special Rapporteur on the rights of Indigenous peoples, Victoria Tauli-Corpuz; Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović; Special Rapporteur on the right to adequate housing, Leilani Farha; and Chair of the Inter-American Commission on Human Rights and Rapporteur for Canada, James Cavallaro. Also in attendance was Caroline Bettinger-Lopez, Advisor to the White House on Violence against Women.

women and girls in particular. While there have been recent calls to include violence against Indigenous men and boys within the scope of this inquiry, this would be a grave mistake. The violence against Indigenous women and girls is a gendered and sexualized phenomenon, caused by the inferior status of Indigenous women and by intersecting sex and race discrimination. Including violence against Indigenous men and boys would obfuscate the causes and consequences of the violence experienced by Indigenous women and girls and impair the inquiry's ability to identify meaningful and effective solutions. Indigenous women and girls in Canada are disproportionately subjected to male violence compared to non-Indigenous women. This is true for both the number of violent incidents experienced and the severity of violence inflicted on them. Because of their sex and Indigeneity they are specifically targeted by some men for violent attacks.²

To ignore or obscure the gendered element of this violence would do a disservice to the Indigenous women and girls threatened and affected by it.

Recommendation 1: That the national inquiry's mandate, as originally announced, be focused on gendered, sexualized and racialized violence against Indigenous women and girls, and their murders and disappearances in particular.

2. Goals of the Inquiry

The goals of the inquiry should be three: 1) to identify measures that will reduce and eliminate male violence against Indigenous women and girls and ensure that the human rights of Indigenous women and girls and the human rights obligations of Canadian governments are fully implemented; 2) to provide justice, redress and answers to family members of disappeared and murdered Indigenous women and girls and to their communities; and 3) to incorporate steps necessary to address

² Commissioners A.C. Hamilton and C.M. Sinclair, *Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper*, 1991.

the systemic violence against Indigenous women and girls, and to support and provide redress for families and communities, into a comprehensive, national co-ordinated plan of action.

Recommendation 2: That the goal of the national inquiry be to provide a systemic examination of the causes and consequences of gendered, sexualized and racialized violence against Indigenous women and girls including the harms to their families and communities, and to identify the measures necessary to address them effectively.

3. Analytical Framework

This inquiry needs to take an Indigenous feminist approach to its work, that is, an approach committed from the outset to the substantive equality of Indigenous women and girls, and which roots its thinking in the specific realities of their lives and conditions. From the outset, the inquiry needs to fully acknowledge the past and present effects of colonization on the lives of Indigenous women and girls, and on the attitudes, practices and policies of Canadian governments and institutions.

a) Indigenous Laws and Legal Orders

The inquiry must incorporate Indigenous law and legal orders into its work and practice. Missing and murdered Indigenous women are a consequence of state lawlessness created by Canadian law's inability to deal with the ongoing aftermath of colonialism and its attendant violence. These spaces of lawlessness are also the result of the denial and erosion of Indigenous laws and legal orders since the arrival of settlers. The inquiry must not perpetuate the undermining and erasure of Indigenous laws and legal orders, but rather must seek to practically support Indigenous lawfulness and engagement with Indigenous legal orders.

Colonial violence is evident in its impact on Indigenous peoples' communities, bodies and personhood. The compounding and ongoing

colonial attack manifests itself in a violence particular to Indigenous women and girls.

This imperative poses some unique challenges and opportunities: while Indigenous law has not been eradicated, there is work that needs to take place in rebuilding and revitalizing the full scope of these legal orders. The inquiry is an opportunity to play a part in this rebuilding process by creating a venue that takes the role and practice of Indigenous law seriously, and where Indigenous knowledge, Indigenous feminism and feminist legal theories, Indigenous legal and critical theories are central.

b) Indigenous Law Lodges

The inquiry must include spaces (Law Lodges) where this work of Indigenous law rebuilding and revitalisation can take place; spaces where civility, civil society and practices of citizenship within Indigenous nations and collectivities can be discussed and debated as they relate to male violence against Indigenous women and girls.

Recommendation 3: That the national inquiry undertake its work using an Indigenous feminist analysis that incorporates gender based analysis and Indigenous law, and that its analysis, framework and strategy be grounded by the specific realities and conditions of Indigenous women's and girls' lives in Canada.

4. Human Rights Approach

A human rights framework must be incorporated into the mandate of the national inquiry. The inquiry is a means of acknowledging and addressing Canada's failures to implement the full range of the human rights of Indigenous women, including their civil, political, economic, social and cultural rights, and moving towards fulfillment of them. The new Government of Canada has promised to implement the *United Nations Declaration on the Rights of Indigenous Peoples*, which protects the human rights of Indigenous women. Canada is bound by treaties, declarations and agreements, including the *Declaration on the Rights of*

Man and the Convention on the Elimination of Discrimination against Women, which require Canada to act with due diligence to protect, prevent, investigate, prosecute and remedy violence against Indigenous women and girls, and to address the harms that it inflicts on families and communities. Canada has also ratified the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic Social and Cultural Rights*, guaranteeing the full enjoyment of civil, political, economic, social and cultural rights to Indigenous women and girls.

The Inter-American Commission on Human Rights and the United Nations Committee on the Elimination of Discrimination against Women conducted investigations in Canada into murders and disappearances of Indigenous women and girls, and issued reports in 2015.³ The CEDAW Committee found that Canada's failure to take adequate action to address the violence is a 'grave violation' of the rights of Indigenous women and girls. The CEDAW Committee issued 38 recommendations; the Inter-American Commission also issued recommendations. Implementing these recommendations is an obligation of Canadian governments. Consequently, the start-up phase of the national inquiry should be the immediate implementation of these recommendations, including the elimination of all remaining sex discrimination from the *Indian Act*, followed by the review of other evidence-based studies and reports that already exist, and the identification of gaps in evidence and knowledge that must be filled.

Throughout its work, the inquiry should be assessing and evaluating evidence and solutions against the framework of the human rights of Indigenous women and girls, in order to ensure that, when implemented,

³ 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, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>; Inter-American Commission on Human Rights, *Murders and Disappearances of Indigenous Women and Girls in British Columbia, Canada*, 12 January 2015, online: <http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>

the inquiry's recommendations and plan will result in fulfillment of the rights of Indigenous women and their families, and fulfillment of the obligations of Canadian governments.

Recommendation 4: That the mandate specify that the national inquiry will take a human rights-based approach and that its standards, analysis and outcomes will be grounded in human rights, including instruments that set out women's human rights and the rights of Indigenous peoples.

Recommendation 5: That the Government of Canada implement the recommendations of the United Nations Committee on the Elimination of Discrimination and the Inter-American Commission on Human Rights, which have investigated the murders and disappearances, issued reports, and made concrete recommendations to Canada about how to move forward. These recommendations provide a base line for the inquiry and implementing them must be the first phase of the work of the inquiry.

5. A National Inquiry

The inquiry must be national in scope, and all levels of government – federal, provincial, territorial and Indigenous – must be open to scrutiny and the application of corrective actions. As the Government of Canada is calling and leading the establishment of the inquiry, it must obtain the immediate agreement of the provinces and territories regarding their inclusion and co-operation. Were the inquiry to be only federal in scope, policing in many jurisdictions, and social programs and policies – including social assistance, housing and child welfare – would fall outside the authority of the inquiry and the goals of the inquiry would be unachievable.

The Inter-American Commission on Human Rights and the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) have stressed that failures to co-ordinate among institutions, among police forces, and between levels of government have contributed to the increased risk of violence faced by Indigenous women and girls. Indeed, the CEDAW Committee found that Canada stands in

violation of Article 3 of the *Convention on the Elimination of Discrimination against Women* because of “insufficient coordination between the different jurisdictional powers of the State party...which exposes Aboriginal women to gaps with regard to both social and judicial protection.” The problems of failed police response, and entrenched structural inequality, cannot be solved by the federal government acting alone. These problems can only be solved by federal, provincial and territorial governments acting together and collaborating on solutions and implementation.

Recommendation 6: That the Government of Canada immediately secure participation in the inquiry from all the provinces and territories to ensure that the inquiry is truly national in scope, and is not hampered by jurisdictional limitations.

6. Harms to Families and Communities

The inquiry must provide a safe, supportive space for family and community members to tell their stories about the loss of a woman or girl and the police and justice system response to the disappearance or murder. Supports include the presence of elders, ceremony appropriate to the lands where hearings are taking place, counselling, and legal assistance as appropriate. Special supports may be needed for the children of disappeared and murdered women. Family must be broadly defined, as many Indigenous women and girls are disconnected from their blood families and communities of origin and make 'families of the heart'. These families are also affected by loss and by the indifference of officials to their efforts to find loved ones; they also suffer trauma, and have experience and information to offer to the inquiry.

The national inquiry must have the capacity to provide redress, healing, memorialization, and compensation to family members, and to children of murdered and disappeared Indigenous women and girls.

Recommendation 7: That the national inquiry fully address the harms done to family members and communities by gendered, racialized and

sexualized violence against Indigenous women and girls and inadequate police response to it, and provide safe, supportive spaces, with counseling, financial support and legal assistance as required, in which family members and community members can tell their stories and seek redress.

7. Independent Review of Individual Cases

The inquiry should design and oversee the initial operation of a separate, specialized mechanism for the independent review of those cases where family members or communities believe that investigations of disappearances or murders were faulty, or where official conclusions regarding deaths or disappearances should be re-examined. The work of this independent review mechanism should be overseen and evaluated by the inquiry on an ongoing basis, to ensure that its operations and methodologies are sound and effective.⁴ This independent review mechanism may need to become permanent or continue after the inquiry has completed its work. Supports for families, including counselling and legal assistance, should be built in to this independent review.

Recommendation 8: That the national inquiry develop a special mechanism for the independent review of those cases where family members or Indigenous organizations believe that investigations or

⁴ Such a mechanism was recommended by the Honourable Susan E. Lang in her Report of the Motherisk Hair Analysis Independent Review. Justice Lang found that faulty hair testing at the Motherisk Program at the Hospital for Sick Children affected decisions made by child welfare agencies about parent-child relationships or criminal responsibility. She recommended that an independent Review and Resource Centre (RRC) be established to identify individual cases where parents and children, or others, were affected. The Review and Resource Centre would provide to individuals who may have been affected comprehensive access to information, legal advice, counselling, support, assessments, alternative dispute resolution services, and other ancillary resources..." The Report is available at: http://www.m-hair.ca/docs/default-source/default-document-library/motherisk_enfbf30b45b7f266cc881aff0000960f99.pdf?sfvrsn=2. The RRC is described at 297.

official conclusions regarding deaths or disappearances should be re-examined.

8. Systemic Focus

The inquiry must have a systemic focus, that is, it must be able to examine the structural inequalities experienced by Indigenous women and girls, and the root causes of the gendered, racialized and sexualized violence they face.

For this inquiry, the examination of policy or systemic issues will be crucial and central, and the inquiry must have ample research capacity, and the ability to engage experts from different disciplines. It is the policy or systemic component of the inquiry that will identify the changes needed to correct the current, country-wide human rights violations experienced by Indigenous women and girls.

The systemic review must examine: 1) the social and economic marginalization of Indigenous women and girls that is a root cause of the violence; 2) the failures of police and the justice system to protect Indigenous women and girls, and to appropriately prosecute and punish perpetrators of violence against them; 3) the state violence against Indigenous women and girls, including direct violence committed by police, other justice system officials, and state representatives in positions of authority; and 4) the sexualized stereotyping of Indigenous women and girls, and the impacts and consequences of sexual exploitation and trafficking on their lives.

Recommendation 9: That the national inquiry fully address the root causes of gendered and racialized violence against Indigenous women and girls, including the systemic and institutionalized devaluing of the lives of Indigenous women and girls, the harmful impact of colonial laws and policies, the impunity caused by failures of law enforcement agencies to diligently investigate and prosecute violence, the proliferation of sexualized violence and imagery of sexualized violence, and all other

factors that have caused the past and present structural inequalities and violence against Indigenous women and girls.

a) Social and Economic Marginalization

The inquiry must investigate the social and economic marginalization of Indigenous women and girls, which makes them vulnerable to violence and unable to escape it.

The United Nations Committee on the Elimination of Discrimination against Women found that Canada's failure to address and remedy the disadvantaged social and economic conditions in which Indigenous women and girls live has allowed violence to persist. The realization of economic, social, political and cultural rights is necessary to enable Indigenous women and girls to escape violence.⁵

The inquiry must examine the adequacy of social programs and services to provide safety and security, and the ways in which Indigenous women's structural and systemic social and economic marginalization makes them targets for violence. Intergenerational poverty; lack of adequate housing; limited food security; inferior educational opportunities; under-employment; a racist child welfare system; over-incarceration; and limited availability of reproductive health services and services to address addictions, among other things, must be examined as underlying factors causing the violence against Indigenous women and girls.

A lack of adequate social services for Indigenous people and a child-welfare system that disproportionately removes Indigenous children from their homes make Indigenous women more vulnerable to exploitation and violence. Without access to safe shelter, Indigenous women are forced to stay in violent homes. When Indigenous women and girls experience violence and they do not have sufficient access to legal aid or legal services they cannot seek justice. When Indigenous women and girls'

⁵ CEDAW Committee, *Report of the inquiry concerning Canada*, at paras. 203 and 210.

organizations are underfunded or non-existent they cannot create the safe spaces necessary for Indigenous women and girls to escape violence and poverty.

Recommendation 10: That the national inquiry fully address the colonial context in which violence against Indigenous women and girls occurs and specifically the profound social and economic disadvantage of Indigenous women and girls. In particular, the national inquiry must address the poverty of Indigenous women and girls and their disadvantaged social and economic conditions in housing, food security, education, employment, child welfare, and their over-incarceration.

(b) Sexual Exploitation and Trafficking of Indigenous Women and Girls

Historically, settlers used Indigenous women as ‘country wives’ and labelled Indigenous women ‘squaws’. Since colonization, Indigenous women and girls have been stereotyped as sexually accessible and disposable women.

Because of this oppression, Indigenous women and girls have been subject to brutal and terrorizing sexual violence that has been neglected by police and condoned by courts in Canada.

The inquiry must examine how the sexual stereotyping of Indigenous women is related to the violence they experience. The dehumanization of Indigenous women and girls and assumptions about their sexual availability are key factors in the violence that must be addressed by the inquiry.

The United Nations Committee on the Elimination of Discrimination against Women recommended that Canada pay special attention to the sexual exploitation of Indigenous women and girls and conduct studies to better understand and develop mechanisms to combat trafficking of Indigenous women and girls.⁶

⁶ CEDAW Committee, *Report on the inquiry concerning Canada*, paras. 120 – 127.

The inquiry must also examine the role that technology plays in facilitating human trafficking, and in disseminating online racialized and sexualized hate and harassment. Existing research shows how racism can undermine a sense of belonging and self-esteem in ways that facilitate the sexual trafficking of Indigenous women and girls. The prevalence of bullying in northern communities, and the potentially acute impacts of online harassment in the context of smaller communities also contribute to sexual trafficking. More research is needed to understand the scope and impacts of cyber-violence on Indigenous women and girls, and its role in the murders and disappearances of Indigenous women and girls.

Recommendation 11: That the national inquiry's analysis of gendered, racialized and sexualized violence include an examination of sexual exploitation and trafficking of Indigenous women and girls, and their causes and consequences.

(c) Police and Justice System Response

The national inquiry must involve an in-depth review of policing institutions, including police forces and police oversight bodies, as well as of the judicial system, across federal, provincial, territorial, and First Nations jurisdictions.

That Canada's police and justice system response to male and state violence fails Indigenous women and girls, their families and communities has been found as a fact by the United Nations Committee on the Elimination of Discrimination against Women and the Inter-American Commission on Human Rights. This failure is one of the threshold reasons for the establishment of the national inquiry.

Policing and police oversight failures in response to cases of missing and murdered Indigenous women and girls include but are not limited to: 1) delay in acting on reports of missing or murdered Indigenous women and girls; 2) failure to inform affected families about the status of investigations; 3) letting investigations 'turn cold' without informing all

affected parties; 4) not laying a charge, recommending a Crown not to charge, and/or determining that a death or disappearance is a result of suicide, an accident, or a personal decision to disappear, without any explanation, or inadequate explanations, to affected parties; 6) failure to recognize and investigate patterns of violence; 7) failure to address the jurisdictional complexity of policing in Canada and to address this complexity and coordinate between police forces; 8) police oversight bodies not adequately responding to complaints of police misconduct; and 9) police being direct perpetrators of violence.

Failed justice system responses include: 1) failure to diligently prosecute; 2) decisions regarding prosecution based on sexist and racist stereotypes and attitudes about 'believable witnesses' and 'likelihood of success'; and 3) gender and race-biased judicial decision-making.

The inquiry's mandate must include a detailed review of systemic patterns of failure, inadequacy, misconduct, sex and race discrimination, and direct violence by police and justice system officials in all jurisdictions.

In addition, Canada's police oversight bodies are neither effective nor trusted mechanisms for holding police to account for alleged misconduct. Of the oversight bodies that exist, most are only able to investigate individual cases, not patterns of systemic mistreatment. Indigenous women do not report police mistreatment because of fear of police retaliation and fear that they will not be believed. The failures of oversight mechanisms must be reviewed by the national inquiry and entirely new mechanisms for police accountability considered.

This examination should include a review of the approximately 1200 cases of murders and disappearances to identify systemic patterns of failure and the means of addressing them; and a review of filed complaints, investigations, charges and prosecutions related to police violence against Indigenous women and girls to identify failures in accountability mechanisms, and the means of addressing those failures.

Recommendation 12: That the national inquiry address fully the failures of police and the justice system to protect Indigenous women and girls from male violence and to investigate, prosecute, and punish the perpetrators promptly and diligently.

Recommendation 13: That the national inquiry be mandated to examine the conduct of the RCMP, provincial and territorial police forces, and Indigenous police forces on reserves and Métis and Inuit settlements, as well as policing systems and institutions, standards, discipline, protocols, oversight, complaint mechanisms, prosecutorial practices, and judicial decision-making.

Recommendation 14: That the national inquiry fully address state violence against Indigenous women and girls, including the historic and institutionalized devaluing of their lives in the Indian Act and other policies and laws, and direct violence against Indigenous women and girls committed by police, other justice system officials, and state representatives in positions of authority.

9. Data Collection

Accurate statistics are vital to understanding the scope and nature of the male violence faced by Indigenous women and girls. It was not until the 2014 RCMP report that there was any official national reporting on the numbers of disappeared and murdered Indigenous women and girls, and some RCMP-gathered data, although commented on by politicians, was never released to the public where it could be subject to scrutiny. Although the homicide reporting that began with the 2014 RCMP report is being continued through Statistics Canada, reporting on the numbers of missing Indigenous women and girls is apparently not, and there is no reporting on suspicious deaths. Furthermore, important questions have been raised about aspects of police reporting including claims about the solve rates for murders of Indigenous women. In short, reliable and comprehensive data is lacking.

It is crucial that the national inquiry assess available data and identify gaps and shortcomings. Feminist experts on data on male violence against women and, in particular on data on violence against Indigenous women and girls, need to be a part of this key examination. A credible and permanent national database and methodology for gathering and reporting statistics on murders and disappearances of Indigenous women and girls should be one of the outcomes of the inquiry. This database must include sufficient details to allow analysis of the patterns of men's and state violence against Indigenous women and girls and the risks these women and girls face.

Recommendation 15: That a component of the national inquiry's work be to develop a permanent mechanism and procedures for collecting data on male violence against Indigenous women and girls, and their murders and disappearances, by collecting statistics on Indigenous origin or identity, reviewing existing methods, identifying gaps and designing new means of collecting comprehensive and accurate national data, with specific attention to ensuring the security and integrity of the data, the privacy of Indigenous girls and women and their families, and to providing mechanisms for accountability in the event of misuse, abuse or mishandling of the data.

10. Independence

The inquiry must be independent from government in every way. It needs to be able to establish its own process, hire its own staff, contract with researchers, hold hearings, summon witnesses, require production of documents, and exercise an independent public voice throughout its work.

Recommendation 16: That the national inquiry be independent from government, adequately funded, and free of legal, time or funding restrictions that will impede its ability to effectively address the scope and nature of the problem.

11. Leadership

This inquiry must be led by feminist Indigenous women. They should be women of integrity, with substantive human rights knowledge, broad vision, and thorough understanding of the structural inequality that is at issue.

Prior to colonization, Indigenous women were included in decision-making and leadership roles in their nations. They were respected in both political and familial spheres. Colonization led to patriarchal shifts in who was respected as a decision-maker and whom settlers recognized as leaders. Due to colonization, Indigenous women have been excluded from important decision-making for decades. Indigenous women must be returned to a role of leadership for the inquiry.

Over the last four decades, Indigenous women have advocated for missing and murdered Indigenous women and girls and they have built skills and gained trust. They have been gathering data, speaking with families and working in the communities affected by this violence. Their expertise must be recognized and utilized.

There must also be opportunities for Indigenous women to bring other Indigenous women into the arena of the inquiry by disseminating information, and providing training and supportive assistance.

Recommendation 17: That the national inquiry be led by Indigenous women.

12. Phases, Components, Capacities of an Inquiry

This inquiry must have different components, phases, and capacities.

a) Review of Extant Recommendations

It has been noted that there are some issues that do not need further examination. The CEDAW Committee and the Inter-American Commission on Human Rights have already made recommendations. Canada is obliged to implement these recommendations, and without delay. The

first work of the inquiry should be to ensure that these recommendations, including the complete elimination of sex discrimination from the *Indian Act*, are implemented, as well as to study other extant recommendations and identify those that can and should be acted on immediately. The inquiry can provide oversight of the implementation of these recommendations and issue interim reports.⁷

b) Scrutiny of Systemic Discrimination

The inquiry will need to identify gaps where research is needed, or where information needs to be gathered. It will need to provide for robust and thorough examination of systemic discrimination in policing and the justice system, and with respect to social and economic conditions and the failures, inadequacies and omissions in Canada's social programs and services that permit and perpetuate violence against Indigenous girls and women.

c) Independent Mechanism for Review of Individual Cases

As noted above, the inquiry needs to design and establish an independent mechanism for the review of individual cases where family or community members believe an investigation or conclusion was faulty. The inquiry should provide oversight and interim reports on the work and progress of this independent review mechanism.

d) Engagement of Different Stakeholders

The pre-inquiry consultation phase of the inquiry has assumed a "families first" approach that lacks a clear articulation of what "family" means and risks creating a false division between Indigenous women and girls and their families.

⁷ This approach – issuing initial recommendations and overseeing and reporting on their implementation – has been taken by the Interdisciplinary Group of Independent Experts (IGIE), mandated by the Organization of American States to investigate the forced disappearances of 43 students in Ayotzinapa, Mexico. Further information is available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/119.asp#eev

Indigenous women's and girls' experiences cannot be artificially separated from their affected families or situated in a hierarchy. For many Indigenous women, there is no separation between them and their family and community, be it their biological families and communities of origin, or a chosen family and community. Indigenous women and girls and their affected families are central stakeholders. For the inquiry to engage with these stakeholders in a meaningful way, mainstream understandings of “family” and “Indigenous women and girls” must be deconstructed and recognized for their complexity.

Many Indigenous women and girls have chosen to flee their biological families and communities of origin. They have established themselves in other communities and have a different, chosen family, or a “family of the heart” with people, who may have few or no ties, biological or other, with Indigenous communities. The many people who make up Indigenous women's and girls' chosen families must also be understood as family within the mandate of the inquiry.

The inquiry must broadly define Indigenous women and girls to include, not only status First Nations women, Métis and Inuit women, but also all women and girls who identify as Indigenous, irrespective of whether they are status Indian or formally recognized in their Indigenous communities of origin. The *Indian Act* does not exhaustively define who is “Indian”; in this absence of a definition, the Supreme Court has found that the federal government's jurisdiction over “Indians”, pursuant to section 91(24) of the *Constitution Act, 1867*, intended to encompass a population that was “mixed, varied and inter-related”.⁸

Indigenous women and girls, their families, communities, and allies are all different stakeholders in the inquiry process. The inquiry must foster Indigenous women's participation and create a space for the different and unique voices of Indigenous women and girls. This imperative requires

⁸ Mary Eberts, “Capacity of a federally-appointed inquiry to examine police behaviour and policy with respect to Indigenous women and girls,” Symposium Presentation, at 4–5. Also see *Canada (Indian Affairs) v Daniels*, 2014 FCA 101.

the inquiry to ground itself in an expressly “Indigenous feminist” framework that privileges and centers the voices of Indigenous women and girls and their affected families, recognizing the varied understandings of families and how these understandings engage a broader stakeholder base, beyond biological Indigenous families.

Allies of Indigenous women and girls, including Indigenous, women's, human rights and other civil society organizations are also stakeholders in this inquiry. Allied civil society organizations have advocated alongside Indigenous women and girls and their families for the creation of a national inquiry. There must also be a place for civil society to contribute their expertise to the inquiry. The process of civil society engagement, similar to the process of engagement for Indigenous women and girls and affected families, must be clear and publicized.

e) Different Kinds of Hearings

The inquiry will need different kinds of hearings – institutional, community, expert – in order to ensure that different classes of participants can inform the inquiry in the most appropriate and supportive settings. The particular needs of Indigenous women and family members in rural, remote and Northern communities will need to be taken into account.

f) Public Education Component and Inquiry Process

The inquiry needs to be consciously pedagogical, and its process matters. Its job is to build trust among Indigenous women, their families and communities and to build understanding in the broader society, so that the final recommendations and plan of the inquiry will be generously received. The inquiry needs to have "a clear media strategy, hold hearings that are not 'lawyer-driven', provide genuine opportunities for civil

society engagement,...welcome independent research, and make it clear that all the evidence it hears will be valued."⁹

g) Formulation of a Plan

The inquiry will need a close-to-final stage at which recommendations can be reviewed and formulated into a comprehensive, national co-ordinated plan, with participation of provinces, territories, and other stakeholders. The traditional outcome of an inquiry is a set of recommendations that is delivered to government to implement. In this circumstance, however, it is clear that the desired outcome is a national action plan, which, for many years, has been called for. The inquiry should provide the venue and a process for the formulation of this plan with federal, provincial and territorial government engagement, and the participation of other stakeholders.

h) Monitoring Implementation

The inquiry will need a transparent and participatory mechanism for monitoring and reporting on implementation of its final recommendations and plan.

Recommendation 18: That the Government of Canada immediately amend the Indian Act to remove all discrimination on the basis of sex from the Act and its administration, as recommended repeatedly by the United Nations Committee on the Elimination of Discrimination against Women and other international human rights bodies.

Recommendation 19: That the mandate of the national inquiry provide for a phased process, to be determined by the commission, beginning with a review of outstanding recommendations from the United Nations Committee on the Elimination of Discrimination against Women and the Inter-American Commission on Human Rights, and other extant

⁹ Kim Stanton, "Institutional Design Considerations for Achieving an Effective Inquiry", January 30 - 31, 2016, Notes for Symposium Presentation.

recommendations, to identify those that can and should be implemented without further study or delay. The inquiry should provide interim reports on its work, and monitor the implementation of its recommendations on an ongoing basis. The outcome of the inquiry should be a comprehensive national action plan, achieved through a public and transparent negotiation among parties, with the participation of Indigenous women and their organizations.

Recommendation 20: That the mandate of the inquiry provide for mandatory implementation of the inquiry's outcomes and establish a mechanism and procedures for ongoing monitoring of the implementation process.

Recommendation 21: That the national inquiry provide funding and other necessary supports to ensure the full participation of Indigenous women and girls, families of missing and murdered Indigenous women and girls, Indigenous women's organizations and other knowledgeable civil society organizations.

Recommendation 22: That the national inquiry have a built-in public education component in order to provide information and public education about the murders and disappearances of Indigenous women, and its causes and consequences, to the Canadian public, on an ongoing basis.

Consolidated Recommendations

1. Scope and Design of the Inquiry

Recommendation 1: That the national inquiry's mandate, as originally announced, be focused on gendered, racialized and sexualized violence against Indigenous women and girls, and their murders and disappearances in particular.

2. Goals of the Inquiry

Recommendation 2: That the goal of the national inquiry be to provide a systemic examination of the causes and consequences of gendered, racialized and sexualized violence against Indigenous women and girls, including the harms to their families and communities, and to identify the measures necessary to address them effectively.

3. Analytical Framework

Recommendation 3: That the national inquiry undertake its work using an Indigenous feminist analysis that incorporates gender based analysis and Indigenous law, and that its analysis, framework and strategy be grounded by the specific realities and conditions of Indigenous women's and girls' lives in Canada.

4. Human Rights Approach

Recommendation 4: That the mandate specify that the national inquiry will take a human rights-based approach and that its standards, analysis and outcomes will be grounded in human rights, including instruments that set out women's human rights and the rights of Indigenous peoples.

Recommendation 5: That the Government of Canada implement the recommendations of the United Nations Committee on the Elimination of Discrimination and the Inter-American Commission on Human Rights, which have investigated the murders and disappearances, issued reports,

and made concrete recommendations to Canada about how to move forward. These recommendations provide a base line for the inquiry and implementing them must be the first phase of the work of the inquiry.

5. A National Inquiry

Recommendation 6: That the Government of Canada immediately secure participation in the inquiry from all the provinces and territories to ensure that the inquiry is truly national in scope, and is not hampered by jurisdictional limitations.

6. Harms to Families and Communities

Recommendation 7: That the national inquiry fully address the harms done to family members and communities by gendered, racialized and sexualized violence against Indigenous women and girls and inadequate police response to it, and provide safe, supportive spaces, with counselling, financial support and legal assistance as required, in which family members and community members can tell their stories and seek redress.

Recommendation 8: That the national inquiry develop a special mechanism for the independent review of those cases where family members or Indigenous organizations believe that investigations or official conclusions regarding deaths or disappearances should be re-examined.

7. Systemic Focus

Recommendation 9: That the national inquiry fully address the root causes of gendered, racialized and sexualized violence against Indigenous women and girls, including the systemic and institutionalized devaluing of the lives of Indigenous women and girls, the harmful impact of colonial laws and policies, the proliferation of sexualized violence and imagery of sexualized violence, and all other factors that have caused the past and present structural inequalities and violence against Indigenous women and girls.

Recommendation 10: That the national inquiry fully address the profound social and economic disadvantage of Indigenous women and girls caused

by Canada's colonial history. In particular, the national inquiry must address the poverty of Indigenous women and girls and their disadvantaged social and economic conditions in housing, food security, education, employment, child welfare, and their over-incarceration.

Recommendation 11: *That the national inquiry's analysis of gendered, racialized and sexualized violence include an examination of sexual exploitation and trafficking of Indigenous women and girls, and their causes and consequences.*

Recommendation 12: *That the national inquiry address fully the failures of police and the justice system to protect Indigenous women and girls from male violence and to investigate, prosecute, and punish the perpetrators promptly and diligently.*

Recommendation 13: *That the national inquiry be mandated to examine conduct of the RCMP, provincial and territorial police forces, and Indigenous police forces on reserves and Métis and Inuit settlements, as well as policing systems and institutions, standards, discipline, protocols, oversight, complaint mechanisms, prosecutorial practices and judicial decision-making.*

Recommendation 14: *That the national inquiry fully address state violence against Indigenous women and girls, including the historic and institutionalized devaluing of their lives in the Indian Act and other policies and laws, and direct violence against Indigenous women and girls committed by police, other justice system officials, and state representatives in positions of authority.*

8. Data Collection

Recommendation 15: *That a component of the national inquiry's work be to develop a permanent mechanism and procedures for collecting data on male violence against Indigenous women and girls, and their murders and disappearances, by collecting statistics on Indigenous origin or identity, reviewing existing methods, identifying gaps and designing new*

means of collecting comprehensive and accurate national data, with specific attention to ensuring the security and integrity of the data, the privacy of Indigenous girls and women and their families, and to providing mechanisms for accountability in the event of misuse, abuse or mishandling of the data.

9. Independence

***Recommendation 16:** That the national inquiry be independent from government, adequately funded, and free of legal, time or funding restrictions that will impede its ability to effectively address the scope and nature of the problem.*

10. Leadership

***Recommendation 17:** That the national inquiry be led by Indigenous women.*

11. Phases, Components, Capacities of an Inquiry

Recommendation 18: *That the Government of Canada immediately amend the Indian Act to remove all discrimination on the basis of sex from the Act and its administration, as recommended repeatedly by the United Nations Committee on the Elimination of Discrimination against Women and other international human rights bodies.*

Recommendation 19: *That the mandate of the national inquiry provide for a phased process, to be determined by the commission, beginning with a review of outstanding recommendations from the United Nations Committee on the Elimination of Discrimination against Women and the Inter-American Commission on Human Rights, and other extant recommendations, to identify those that can and should be implemented without further study or delay. The inquiry should provide interim reports on its work, and monitor the implementation of its recommendations on an ongoing basis. The outcome of the inquiry should be a comprehensive national action plan, achieved through a public and transparent negotiation among parties, with the participation of Indigenous women and their organizations.*

Recommendation 20: *That the mandate of the inquiry provide for mandatory implementation of the inquiry's outcomes and establish a mechanism and procedures for ongoing monitoring of the implementation.*

Recommendation 21: *That the national inquiry provide funding and other necessary supports to ensure the full participation of Indigenous women and girls, their families and communities, and Indigenous women's organizations and other knowledgeable civil society organizations.*

Recommendation 22: *That the national inquiry have a built-in public education component in order to provide information and public education about the murders and disappearances of Indigenous women, and its causes and consequences, to the Canadian public, on an ongoing basis.*

