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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Visit to Canada

### **Report of the Special Rapporteur on violence against women, its causes and consequences\*<sup>,</sup> \*\***

#### *Summary*

The Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, visited Canada from 13 to 23 April 2018. In her report, she examines the gaps and challenges in fulfilling the obligations of the State to eliminate violence against women, its causes and consequences, and recommends measures for preventing and combating violence against women in the country.

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\* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

\*\* The present report was submitted after the deadline so as to include the most recent information.



## **Annex**

### **Report of the Special Rapporteur on violence against women, its causes and consequences, on her visit to Canada**

#### **I. Introduction**

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, visited Canada from 13 to 23 April 2018.
2. During her visit, the Special Rapporteur met key stakeholders at the federal, provincial and territorial levels regarding the situation of violence against women, gathering first-hand information through visits to 3 of the 10 provinces (Manitoba, Ontario and Quebec), and the territory of Nunavut.
3. At the federal level, she held several meetings and round tables with officials from the Ministries of Women and Gender Equality (formerly Status of Women Canada), Justice, Crown-Indigenous Relations and Northern Affairs, Employment, Families, Children and Social Development, Immigration, Refugees and Citizenship, Public Safety and Emergency Preparedness, National Defence and Global Affairs, and from the federal agency Correctional Service Canada and the Canada Border Services Agency.
4. At the provincial and territorial levels, in Toronto, she met ministers and authorities representing the government of Ontario; in Montreal, with authorities from the government of Quebec; in Winnipeg, with ministers and authorities representing the government of Manitoba; and in Iqaluit with one minister and government officials from Nunavut.
5. She visited two women's correctional facilities: the Nunavut Women's Correctional Centre in Iqaluit and the Women's Correctional Centre of Manitoba in Headingly. She also visited shelters for women fleeing violence in each location.
6. The Special Rapporteur also met a range of representatives of statutory human rights agencies such as the Canadian Human Rights Commission, the Ontario Human Rights Commission and the Commission des droits de la personne et des droits de la jeunesse of Quebec. She also met representatives of other institutions and advisory bodies: the Office of the Correctional Investigator, the Qullit Nunavut Status of Women Council, the Protecteur du citoyen du Québec and the Conseil du statut de la femme of Quebec.
7. In addition, the Special Rapporteur held a videoconference with the Chief Commissioner of the National Inquiry into Missing and Murdered Indigenous Women and Girls, and met representatives of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec, also known as the Viens Inquiry.
8. She convened meetings with a broad range of civil society representatives, academics, service providers and women's legal centres, such as the National Association of Women and the Law, the Barbra Schlifer Commemorative Clinic and the Canadian Feminist Alliance for International Action. She also held several meetings with academics in Ottawa and Toronto.
9. The Special Rapporteur expresses her gratitude to the Government of Canada and the governments of the provinces and territories for welcoming her on her first visit and for their excellent cooperation, and to civil society organizations, academics and other stakeholders for their valuable input. She expresses her heartfelt thanks to victims of violence who agreed to relate their personal experiences, which were crucial to gaining a deeper understanding of the situation of violence against women in Canada.

## II. General context

10. Canada has a long-standing record of support at the United Nations for issues relating to violence against women, including the establishment of the mandate of the Special Rapporteur and as the main sponsor of the mandate's founding resolution of 1994. The Special Rapporteur's first official visit to Canada to gather first-hand information on the situation of violence against women coincided with the commendable decision by the Government to proclaim itself a feminist Government and to adopt feminist foreign and international assistance policies. However, the Special Rapporteur notes that women lives' in Canada are still marked by systemic gender-based violence, especially concerning indigenous and other women who encounter multiple forms of discrimination.

11. During her visit to various federal, provincial and territorial jurisdictions, the Special Rapporteur identified a variety of good practices that could be replicated in other provinces and territories, as well as at the global level. She also observed significant gaps and challenges regarding the prevention and protection of women from gender-based violence, particularly regarding indigenous women and girls.

12. Intimate partner violence is the most common form of violence against women in Canada: 8 in 10 victims are women and girls.<sup>1</sup> The rates of female victims of violent crime were eight times higher in the territories and nearly three times higher in the provincial north than in the south.<sup>2</sup> Indigenous women are three times more likely to be victims of violence than non-indigenous women. Approximately every 2.5 days, a woman in Canada is killed by her intimate partner.<sup>3</sup> In 2017, 84 per cent of police-reported victims killed by an intimate partner were women.<sup>4</sup>

13. An issue of major concern in Canada is the inadequate protection of indigenous women and girls' economic, social and cultural rights, which exacerbates the high rate of violence against women. Indigenous women from First Nations, Métis and Inuit communities face violence, marginalization, exclusion and poverty because of institutional, systemic, multiple and intersecting forms of discrimination not addressed adequately by the State. According to 2016 data, indigenous people represent 5 per cent of the Canadian population, with indigenous women constituting 2.5 per cent of the total population.<sup>5</sup> Indigenous women and girls are nevertheless nearly three times more likely to be victimized by violent crime<sup>6</sup> and six times more likely to be the victim of homicide than non-indigenous women.<sup>7</sup> Indigenous women and girls encounter multiple forms of discrimination, including inadequate social assistance and housing and a lack of affordable public childcare. The number of indigenous women whose children are removed from their care, a practice that began in the era of residential schools, continues to be high.<sup>8</sup>

## III. Incorporation of the international framework on women's rights and violence against women

14. In 1981, Canada was one of the first countries to ratify the Convention on the Elimination of All Forms of Discrimination against Women. In 2002, it ratified the

<sup>1</sup> See Statistics Canada, "Family violence in Canada: a statistical profile, 2017" (2018). In Canada, crime is measured using a combination of both police-reported and victim-reported (self-reported) data.

<sup>2</sup> See Statistics Canada, "Police-reported crime in Canada's Provincial North and Territories" (2015).

<sup>3</sup> See Canadian Femicide Observatory for Justice and Accountability, "#CallItFemicide: understanding gender-related killings of women and girls in Canada 2018".

<sup>4</sup> See Statistics Canada, "Homicide in Canada, 2017" (2018); Statistics Canada, "Family violence in Canada: a statistical profile, 2016" (2018).

<sup>5</sup> See Statistics Canada, "Aboriginal population profile, 2016 Census" (2018).

<sup>6</sup> See Statistics Canada, "Women and the criminal justice system" (2017).

<sup>7</sup> See Statistics Canada, "Homicide in Canada, 2017" (2018).

<sup>8</sup> See Stand Canada, "Truth and Reconciliation Commission report executive summary". Available at [www.standcanada.org/truth-reconciliation-commission-report-summary/](http://www.standcanada.org/truth-reconciliation-commission-report-summary/).

Optional Protocol to the Convention and recently announced that it would begin the process of ratifying the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.<sup>9</sup>

15. Although Canada ratified the Convention on the Elimination of All Forms of Discrimination against Women, its provisions are not fully incorporated into the national legal system. They are not directly applicable and do not have full legal effect at the federal, provincial or territorial levels. The federal structure and division of competencies concerning the protection of women's rights among the federal, provincial and territorial governments, combined with the absence of a strict obligations to apply the Convention's provisions at all levels, results in varying degrees of incorporation of the Convention into laws on violence against women and girls, which presents specific challenges in assessing implementation gaps.

## **IV. State responses and measures to address violence against women**

### **A. Constitutional and legislative and policy framework**

16. Canada is a federal system with a division of responsibilities among the federal, provincial and territorial governments, including in the area of violence against women. While the federal Government has jurisdiction over criminal law, the administration of justice is a provincial and territorial responsibility. Federalism should nevertheless not constitute a barrier to human rights implementation. The Special Rapporteur recalls that, in compliance with Committee on the Elimination of Discrimination against Women general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, States parties have core obligations to fulfil their obligations to all women within their jurisdiction. In 2016, the Committee also reiterated that "the federal Government is responsible for ensuring the implementation of the Convention and providing leadership to the provincial and territorial governments" (CEDAW/C/CAN/CO/8-9, para. 10).

17. Sections 15 and 28 of the Canadian Charter of Rights and Freedoms, which is part of the Constitution Act, are a repository of equality and non-discrimination provisions. The right to life, liberty and security of the person is guaranteed under section 7 of the Charter and the right not to be subjected to any cruel and unusual treatment or punishment are established under sections 7 and 12. Sections 25 and 35 recognize and affirm the existing indigenous and aboriginal and treaty rights or other rights or freedoms of the aboriginal people of Canada, while section 35 further clarifies that the aboriginal and treaty rights "are guaranteed equally to male and female persons".

18. Notwithstanding these constitutional guarantees and the accepted international treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights, the Indian Act still discriminates against First Nations women and their descendants with respect to the entitlement to and transmission of Indian status, which represents a continuing violation of international and national gender equality provisions.

19. The Canadian Charter of Rights and Freedoms protects everyone's right to be treated equally under the law and guarantees broad equality rights and other fundamental rights, such as freedom of expression, freedom of assembly and freedom of religion.

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<sup>9</sup> Canada has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

20. The Canadian Human Rights Act protects against harassment or discrimination based on race, age and sexual orientation. In 1996, it was amended to include sexual orientation as one such prohibited ground. In 2000, Parliament passed bill C-23, which gives same-sex couples the same social and tax benefits as heterosexuals in common-law relationships. Bill C-38, which became the Civil Marriage Act in 2005, provides for same-sex couples to be married anywhere in Canada. Most provinces and territories have included sexual orientation as a prohibited ground of discrimination.<sup>10</sup> In 2017, the Government amended the Canadian Human Rights Act and the Criminal Code, making gender identity and expression a prohibited ground of discrimination.

21. Canadian federal criminal legislation provides for uniform norms on sexual assault that encompass rape and sexual violence. The Special Rapporteur notes the adoption in 2018 of bill C-51, which is intended to clarify and strengthen sexual assault laws in Canada, including important clarification on lack of consent.

22. In 2018, the Government also introduced bill C-75, which modernizes interim release provisions, requires that attention be given to the circumstances of accused indigenous and vulnerable populations, providing more onerous requirements for offences involving violence against an intimate partner, and increases the maximum imprisonment for repeat offences involving intimate partner violence, also considering intimate partner violence to be an “aggravating factor”.

23. The Criminal Code also contains provisions to protect victims of violence, including domestic violence, by giving criminal courts a wide range of powers to release or detain an accused person, including release conditions such as “no contact” until the trial or appeal (sect. 515). Special consideration is given to the harm that comes from family violence. Because of the nature of the harm, the sentencing provisions of the Code (sect. 718.2) make it an aggravating factor when the offence involves the abuse of a spouse or common-law partner, the abuse of a person under the age of 18 or the abuse of a position of trust or authority.

24. The Protecting Canadians from Online Crime Act, of 2015 created a new offence under section 162.1 of the Criminal Code prohibiting the non-consensual distribution of intimate images. The provinces of Manitoba, Alberta, and Newfoundland and Labrador introduced, respectively, the Intimate Image Protection Act, the Protecting Victims of Non-Consensual Distribution of Images Act, which came into force in 2017, and the Intimate Images Protection Act, of 2018.

25. Although the criminalization of violence against women in family, sexual assault and immigration law is an important legal step towards tackling this epidemic, reports by service providers for women victims of violence highlight specific victimization of women who request State protection against violence, which is reflected in an increase in the laying of charges against women who denounce alleged perpetrators whom they know. Service providers have also observed cases in which the requirements of child custody arrangements based on the “best interests of the child” test force women to have continued contact with abusers, ignoring the violence committed by the former spouses.<sup>11</sup>

26. To date, six provinces (Alberta, Manitoba, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Saskatchewan) and three territories (Northwest Territories, Yukon and Nunavut) have adopted specific legislation on family violence designed to complement the Criminal Code and further protect victims of family violence, including by providing emergency intervention and protection orders. Other jurisdictions provide for family violence protection orders under their family law legislation, such as the Family Law Act in British Columbia. Some provinces and territories also provide “non-criminal emergency protection orders” or, if not available, the federal Criminal Code authorizes “peace bonds” that are available in all Canadian jurisdictions. All parts of Canada have

<sup>10</sup> See [www.canada.ca/en/canadian-heritage/services/rights-lgbti-persons.html](http://www.canada.ca/en/canadian-heritage/services/rights-lgbti-persons.html).

<sup>11</sup> See, for example, Shoshana Pollack, Melanie Battaglia and Anke Allspach, “Women charged with domestic violence in Toronto: the unintended consequences of mandatory charge policies” (Women Abuse Council of Toronto, 2005).

police and Crown prosecutor and spousal abuse policies to ensure that spousal violence is treated as seriously as stranger violence, including regarding the enforceability of protection orders.<sup>12</sup>

27. A main issues of concern is the lack of a national definition of family and domestic violence and the lack of a national legal framework on violence against women and domestic violence based on women's international human rights standards, as enshrined in the Convention on the Elimination of All Forms of Discrimination against Women and presented in detail in the Committee's general recommendations No. 19 (1992) on violence against women and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

28. The provincial and territorial governments have primary jurisdiction in the administration and delivery of health-care services. The Canada Health Act, the federal health-care insurance legislation, requires them to provide coverage for medically necessary hospital, physician and surgical-dental services to their eligible residents. With respect to the protection of sexual and reproductive health and rights, the Special Rapporteur notes that, in compliance with the 1988 Supreme Court of Canada decision *R. v. Morgentaler*, there is no criminalization of abortion in Canada. Access to it, however, is uneven nationwide.

29. Canada has 14 jurisdictions for employment legislation, each with its own approach and some with little or no language on harassment and violence. Regulations on workplace violence therefore might not include all forms of violence, such as psychological harassment and bullying or domestic violence when it affects the workplace. Much health and safety legislation is framed around the reporting of incidents of violence, which makes it challenging to capture more subtle forms of harassment such as hostile workplaces, or the intersection of different forms of harassment for women with multiple and intersecting identities. Such legislation does not always apply to all workers, including precarious and part-time workers, workers in the informal sector and migrant workers (including migrant domestic worker), in which women are overrepresented.

30. The Special Rapporteur notes the introduction in 2017 of bill 65, which amended the Canada Labour Code to create a framework for enhancing prevention, protection and response to harassment and violence in federally regulated workplaces and extended the provisions to include parliamentary workers. In addition, recent changes were made to the Code by introducing a new 10-day leave for victims of family violence (of which 5 days are paid).

31. In June 2017, the Government, through the Minister for Women and Gender Equality, launched a strategy to prevent and address gender-based violence. The Special Rapporteur also welcomes the report of the Minister on the 2016 engagement process for the strategy, which includes data collection among the key priority actions.

32. The aforementioned strategy – based on prevention, support for survivors and their families and the promotion of responsive legal and justice systems – is mainly project oriented, focusing on specific areas and lacking a human rights-based holistic legal framework and comparable data collection for all forms of gender-based violence against women in all jurisdictions.

33. The Special Rapporteur also highlights that there is a need for a more comprehensive and holistic national action plan on violence against women.

## **B. Institutional framework: national machinery and independent institutions**

34. After the Royal Commission on the Status of Women presented its landmark report in 1970, Canada appointed in 1971 a minister on the status of women, followed in 2015 by the first Minister for the Status of Women, to ensure that government decisions include

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<sup>12</sup> See [www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html](http://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html).

women's contributions and concerns. In 2018, the Office of the Coordinator for the Status of Women was replaced by the Department for Women and Gender Equality, whose mandate was expanded to advance social, economic and political equality with respect to sex, sexual orientation and gender identity or expression. The Department is responsible for promoting a greater understanding of the intersection of sex and gender with other identity factors, including race, national and ethnic origin, indigenous origin or identity, age, sexual orientation, socioeconomic condition, place of residence and disability. Provincial and territorial ministers are responsible for the status of women and commensurate offices within the public service, and some have independent advisory councils. There is also a federal, provincial and territorial forum of ministers responsible for the status of women that meets annually.

35. The federal agency on the status of women was turned into a full-size department, which was important for improving the coordination of laws and policies with accepted international standards nationwide.

36. The Canadian Human Rights Commission, established in 1977, is an independent human rights institution authorized to raise awareness of any human rights-related matter and administer anti-discrimination law. Under the Canadian Human Rights Act, it can investigate and settle complaints of discrimination in employment and in the provision of services within federal jurisdiction.

37. National mechanisms could be used for the legislative reforms needed to harmonize and coordinate the implementation of international human rights standards at all levels. The Special Rapporteur was informed that, for the first time in nearly 30 years, federal, provincial and territorial ministers responsible for human rights met to discuss priorities in relation to the international human rights obligations of Canada. She highlights that, for example, these meetings could be meant to systematically monitor and implement the United Nations standards on the elimination of violence against women under the Convention on the Elimination of All Forms of Discrimination against Women.

## **V. Manifestations of violence against women, its causes and consequences**

38. Data on gender-based violence against women in Canada are collected but are fragmentary and, in general, incomparable throughout the provinces and territories, owing to differences in what is captured, counted and reported. In the absence of an exhaustive national observatory on violence against women, data are collected without comprehensive information-gathering and analysis at the national level.

### **A. Femicide and gender-based violence against women**

39. The Special Rapporteur received official general data on violence against women through Statistic Canada's homicide survey. These data, however, lack an adequate gender lens.<sup>13</sup> While the killing of all women and girls is included as a core focus of data collection for the survey, data are limited (e.g., minimal information on the context of crime, the history of the relationship and the prior history of violence), with little focus on justice and accountability following the femicide beyond the initial police charge. Furthermore, the homicide survey data do not address post-femicide information useful for prevention, including the monitoring of criminal justice and social responses and stereotypes. Both pre- and post-prevention initiatives are crucial and reciprocal.

40. Comparable data at the national level on specific forms of violence and gender-related killings of women or on femicide are necessary for evidence-based policymaking. The Special Rapporteur welcomes the initial steps taken and good practices in some provinces regarding the establishment of observatories on femicide, in line with her

<sup>13</sup> See [www150.statcan.gc.ca/n1/en/pub/85-002-x/2017001/article/54879-eng.pdf?st=b4CCeKMU](http://www150.statcan.gc.ca/n1/en/pub/85-002-x/2017001/article/54879-eng.pdf?st=b4CCeKMU).

initiative for the establishment of a “Femicide watch” worldwide (A/71/398). She also welcomes the establishment, in 2017, by the Centre for the Study of Social and Legal Responses to Violence at the University of Guelph, of the Canadian Femicide Observatory for Justice and Accountability in Ontario, which tracks femicides and documents social and State responses, somewhat in line with the recommendations of the Special Rapporteur.<sup>14</sup>

41. While domestic violence death review committees are also important mechanisms, they do not apply in their work the human rights framework necessary for the prevention of femicides.

42. Comprehensive data collection and analysis of cases of femicide and gender-based violence, in line with the modalities recommended by the Special Rapporteur, will allow for international and cross-jurisdictional comparisons and the determination of shortcomings as a basis for the prevention violence against women.

## 1. Provision of shelters and adequate housing

43. There are a significant number of women’s shelters in Canada. According to 2017–2018 data, there were 552 residential facilities for victims of abuse nationwide.<sup>15</sup> Most have a long history, such as the Ontario Association of Interval and Transition Houses, created in 1977, the Regroupement des maisons pour femmes victimes de violence conjugale in Quebec and the Alberta Council of Women’s Shelters. In 2012, those associations created the Canadian Network of Women’s Shelters and Transition Houses, a provincial and territorial organization also known as Women’s Shelters Canada.<sup>16</sup>

44. The operations of shelters are linked for the most part to provincial policies and governments. Although the current number of shelters may appear impressive, Canada is a vast country and a significant percentage of shelters often lack capacity and services, resulting in hundreds of women being turned away on a daily basis with no other place to go, a situation that is made worse owing to the housing crisis affecting the country, which has made houses unavailable or unaffordable. Owing to the lack of adequate services to welcome women victims of violence with their children, women, especially indigenous women, are also concerned about losing custody of their children when seeking protection. Of the 215 shelters that responded to the 2018 “Shelter voices” survey,<sup>17</sup> 47 per cent declared that they had no space available, which resulted in 75 per cent of requests for residential services not being accommodated. The service providers unanimously denounced the dire shortage of shelters and a general lack of funding and affordable public housing, including transitional housing and second-stage accommodation and rehabilitation services, such as employment opportunities. The extent of services available in urban areas is much greater than in rural areas, notwithstanding the fact that, in rural areas, the rates of violence against women are among the highest in Canada, and too often the services provided are limited to safe space without specific programmes aimed at empowering women. Public funds are often distributed on a per capita basis, which greatly disadvantages rural and isolated communities. There are only three women’s shelters in the Yukon and five residential facilities for victims of abuse each in the Northwest Territories and in Nunavut, further exacerbating the geographical isolation of women from indigenous communities. Many of these shelters are small and accessible only by air or ice roads, and the lack and cost of transportation increases the cost of services.

45. Of the 552 shelters for victims of abuse operating in Canada in 2017–2018, just 6 per cent served women and children in indigenous communities. The high rates of violence and the small size of communities make community-based shelters extremely important for

<sup>14</sup> See <https://femicideincanada.ca/sites/default/files/2018-09/CFOJA%20FINAL%20REPORT%20ENG%20V3.pdf>.

<sup>15</sup> See [www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00007-eng.htm](http://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00007-eng.htm).

See also Government of Canada, Employment and Social Development Canada, “Shelter Capacity Report 2016”.

<sup>16</sup> See Margo Goodhand, *Runaway Wives and Rogue Feminists* (Fernwood Publishing, 2017). See also [www.sheltersafe.ca](http://www.sheltersafe.ca).

<sup>17</sup> See [https://endvaw.ca/wp-content/uploads/2018/06/shelterVoices\\_ENG\\_2018\\_WEB.pdf](https://endvaw.ca/wp-content/uploads/2018/06/shelterVoices_ENG_2018_WEB.pdf).



women. There is, however, a lack of adequate shelters provided to indigenous communities that respect cultural and language diversities and that are led by indigenous women.

## 2. Legal aid

46. Another concern is the inadequacy of free legal-aid services, including for women survivors of violence, and federal-provincial cost-shared pilot projects providing independent legal advice for survivors are available only in some provinces. Under the Canada Social Transfer, the Government transfers criminal and civil legal aid directly to the provinces and territories. Given that the requirements for provinces and territories to spend Canada Social Transfer money on civil legal aid were removed in 1995, expenditure has fallen drastically.

47. There is a marked gender difference in legal aid use: men are the primary users of criminal legal aid, while women are the primary users of civil legal aid, especially for family law matters. The Canadian Bar Association asserts that the lack of access to civil legal aid disproportionately affects women and indigenous people, as well as other disadvantaged groups.

48. In 2008 and 2016, the Committee recommended that there be standardized minimum criteria for eligibility for legal aid. There continues to be, however, uneven access to legal aid services among provinces and territories and narrow eligibility requirements, which severely curtail women's access to justice.<sup>18</sup>

## B. Domestic violence

49. Intimate partner violence is one of the most common forms of violence against women in Canada. According to 2017 data, women are victims of intimate partner homicide at a rate five times greater than men. A woman is killed by her partner or former partner every 2.5 days. Of all police-reported violent crime in 2016, more than 26 per cent resulted from family violence. Almost 67 per cent of family violence victims were women and girls. A total of 79 per cent of police-reported intimate partner violence was committed against women during same year.<sup>19</sup>

## C. Sexual assault of women and girls

50. Notwithstanding increased societal awareness about sexual assault, it continues to be a persistent issue. Unlike the rates of other violent crimes, which have been decreasing, the rate of sexual assault has remained unchanged since 2004. According to the 2014 General Social Survey on Canadians' safety, there were approximately 636,000 self-reported incidents of sexual assault over a 12-month period.<sup>20</sup> Because of the pervasiveness of sexual violence in women's lives, women are now more likely than men to be victims of violent crime. Some groups of women, including indigenous women, young women, those who identify as LGBTQ2<sup>21</sup> and women with mental health conditions are especially vulnerable to sexual violence. As highlighted in the General Social Survey, more than one in five indigenous women between 15 and 24 years of age reported having been sexually assaulted in 2014, and the sexual assault justice gap, which appears to be rooted in gendered colonization, is glaringly wide between indigenous and non-indigenous women.<sup>22</sup>

51. A further element of concern is the urgent need for capacity-building to address violence against women and sexual violence by law enforcement officials. The Royal

<sup>18</sup> See Ab Currie, "The state of civil legal aid in Canada" (2013), and Alison Brewin with Lindsay Stephens, *Legal Aid Denied: Women and the Cuts to Legal Services in BC* (2004).

<sup>19</sup> See Statistics Canada, "Family violence in Canada: a statistical profile, 2016" (2018).

<sup>20</sup> See [www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54866-eng.htm](http://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54866-eng.htm).

<sup>21</sup> LGBTQ2 stands for "lesbian, gay, bisexual, transgender, queer, two-spirit"; where "2" refers to indigenous two-spirit individuals and is inclusive to queer identities.

<sup>22</sup> See Government of Alberta, "Independent report on the incarceration of Angela Cardinal" (2018).

Canadian Mounted Police has faced continuous public scrutiny stemming from numerous reports highlighting a culture of bullying, harassment and dysfunction. In 2016, the Mounted Police delivered a historic apology to women officers and civilian members, with a massive settlement over harassment, discrimination and sexual abuse claims that was capped at \$100 million Canadian dollars. In 2015, former Supreme Court Justice Marie Deschamps produced a major report, the “External review on sexual misconduct and sexual harassment in the Canadian Armed Forces”, which denounced an underlying sexualized culture hostile to women and LGTBQ2 members and conducive to serious incidents of sexual harassment and assault, as well as a lack of reporting of such harassment and assault. Following the Deschamps report, the Canadian Armed Forces established Operation HONOUR in order to address harmful and inappropriate sexual behaviour and sexual misconduct in the Canadian military. Both the Mounted Police and the Canadian Armed Forces recently adopted initiatives to prevent and address gender-based violence against women and girls.

### **Sexual violence against and harassment of women and girls at universities**

52. The Special Rapporteur received reports on widespread cases of sexual violence against women and girls in schools and on campuses. Young women between 15 and 25 years of age attending an education facility are at a high risk of experiencing sexual violence. Of all self-reported sexual assaults in 2014, 41 per cent were reported by students, 90 per cent of whom were female students. The risk of sexual violence is particularly high for female students who are indigenous, live with disabilities and are LGTBQ2.<sup>23</sup>

53. Nationwide, there are some inconsistencies in legislation addressing sexual violence in schools and on campuses. In relation to post-secondary institutions, only 4 provinces (of 10 provinces and 3 territories), namely, British Columbia, Manitoba, Ontario and Quebec, have introduced legislation that requires universities to have stand-alone policies on sexual violence. Student groups and experts question the efficacy of current legislation in informing the implementation of comprehensive policies on sexual violence. The Special Rapporteur welcomes the specific budget allocation, in 2018, through “It’s time: Canada’s strategy to prevent and address gender-based violence” to establish a national framework to address gender-based violence in post-secondary institutions.

## **D. Trafficking in women and girls**

54. Trafficking is a matter of serious concern in Canada. The country’s response to human trafficking is framed primarily through criminal law (Criminal Code, sects. 279.01–279.04). It also adopted a specific national action plan to combat human trafficking<sup>24</sup> and launched the National Human Trafficking Hotline. Although human trafficking constitutes a criminal offence in Canada, the Special Rapporteur highlights that there is a lack of comprehensive and systematic data collection on trafficking and trafficking victims, including on trafficked indigenous women, and exploitation through prostitution and other related purposes.

55. According to a survey conducted by the Canadian Women’s Foundation, indigenous women and girls are overrepresented as victims of human trafficking in Canada (50 per cent of trafficked girls and 51 per cent of trafficked women).<sup>25</sup> LGTBQ2 people also are at risk of being trafficked, and they face many vulnerabilities, including precarious housing and employment, a lack of support and isolation from their families and communities, as well as a lack of access to health and safety services.<sup>26</sup> Stigma and a lack of equal access to

<sup>23</sup> See Statistics Canada, “Self-reported sexual assault in Canada, 2014” (2017).

<sup>24</sup> Available at [www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/index-en.aspx](http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/index-en.aspx).

<sup>25</sup> See [www.canadianwomen.org/wp-content/uploads/2017/09/CWF-TraffickingReport-Auto-1\\_0.pdf](http://www.canadianwomen.org/wp-content/uploads/2017/09/CWF-TraffickingReport-Auto-1_0.pdf).

<sup>26</sup> See Ayden I. Scheim and others, “Barriers to well-being for aboriginal gender-diverse people: results from the Trans PULSE project in Ontario, Canada”, *Ethnicity and Inequalities in Health and Social Care*, vol. 6, No. 4 (November 2013), pp. 108–120; Janet Ristock and others, “Aboriginal two-spirit and LGTBQ migration, mobility, and health research project: Winnipeg final report” (2010); and

culturally appropriate programmes and services create shame, which hinders indigenous women and LGBTQ2 people from gaining access to the legal system, healing resources and permanent, affordable housing.

56. The immigration and labour migration system implemented under the Temporary Foreign Worker Program allows Canadian employers to hire documented foreign nationals. In the case of foreign nationals who are undocumented, however, they face conditions of labour and economic scarcity and coercion, as well as a lack of access to social services, such as health care, which can lead to the criminalization and marginalization of migrant women and expose them to trafficking and sex work, with the related risks of detention and deportation. This has the perverse impact of disincentivizing women migrants from reporting rapes, assaults or other violations.

## **E. Online violence against and harassment of women and girls**

57. Online violence against women is an emerging issue in Canada. In the light of her thematic work on online violence against women and girls (A/HRC/38/47), the Special Rapporteur welcomes the country's legislative response on this matter, the creation of a new offence under the Criminal Code regarding the non-consensual distribution of intimate images and the adoption of similar provisions in Alberta, Manitoba and Newfoundland and Labrador. She also welcomes the budget allocation to invest in preventing teen dating violence and cyberbullying initiatives and the creation of the "Digital Inclusion Lab" within Global Affairs Canada, which is focusing on technology-facilitated violence against women and girls, digital threats to liberal democracy and artificial intelligence and human rights. She further welcomes the work carried out by the Citizen Lab of the University of Toronto, an interdisciplinary laboratory focusing on research, development and high-level strategic policy and legal engagement at the intersection of information and communication technologies, human rights and global security while integrating a gender and diversity-based analysis.<sup>27</sup> Such good practices should be systemically implemented in all jurisdictions.

## **F. Violence against women and girls relating to reproductive and sexual rights and health**

58. While there are no criminal laws restricting access to abortion in Canada, the Special Rapporteur notes that the lack of access to safe abortion services continues to be a barrier for women, in particular those in rural or remote regions.<sup>28</sup> In addition, while there are no laws requiring parental consent nor imposing restrictions to abortion on the basis of age, young women seeking abortion services have reported experiencing stigmatization from health-care providers.

59. During her visit, the Special Rapporteur was also informed of several alleged cases of the forced sterilization of indigenous women in Canada.<sup>29</sup> After several women, in particular indigenous women, reported having been victims of this practice, there has been some official recognition of such episodes of gender-based violence.

60. In this regard, the Saskatoon Health Region apologized to indigenous women who had been coerced into surgery that prevented them from bearing more children and

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Catherine Taylor, "Health and safety issues for aboriginal transgender/two spirit people in Manitoba", *Canadian Journal of Aboriginal Community-based HIV/AIDS Research*, vol. 2 (2009), pp. 63–84.

<sup>27</sup> See <https://citizenlab.ca/wp-content/uploads/2017/11/Final-UNSRVAG-CitizenLab.pdf>.

<sup>28</sup> See Wendy V. Norman and others, "Barriers to rural induced abortion services in Canada: findings of the British Columbia abortion providers survey", *PLoS ONE*, vol. 8, No. 6 (June 2013), e67023.

<sup>29</sup> See Amnesty International, "Canada: human rights promises must be backed by action", submission for the thirtieth session of the Working Group on the Universal Periodic Review, 2018, and Maurice Law Barristers & Solicitors, "Forced sterilization of indigenous women in Canada", submission to the Inter-American Commission on Human Rights, 9 February 2018.

acknowledged through its spokesperson that “racism exists within our health care system and we, as leaders, acknowledge this”.<sup>30</sup>

61. The Special Rapporteur believes that the practice of forced sterilization should be investigated and addressed in the context of systemic discrimination against indigenous people, particularly indigenous women, and that comprehensive information on consent should be made available, while victims of such violence should receive full remedy including compensation.<sup>31</sup>

## G. Violence against women in detention

62. The Special Rapporteur visited the Nunavut Women’s Correctional Centre in Iqaluit and the Women’s Correctional Centre of Manitoba in Headingly, where she had the opportunity to hold private meetings with women in detention.

63. The Special Rapporteur welcomes the positive steps that the Government of Canada is taking in relation to the current consultations with provincial and territorial governments in view of the forthcoming accession of Canada to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She nevertheless draws the attention of the Government to serious concerns identified during her visit to the detention centres,<sup>32</sup> primarily the overcrowding of facilities, the overrepresentation of indigenous women, the widespread use of practices such as strip searches and the employment of male staff working in direct contact with women in women’s institutions, as well as the lack of a dedicated, stand-alone facility for women in federal corrections.

64. Most women in prison have histories of abuse (physical, sexual, domestic) and addictions and suffer from post-traumatic stress disorder.<sup>33</sup> In 2014–2015, 68 per cent of federally sentenced women reported histories of sexual abuse and 86 per cent reported having been physically abused at some point in their life. A total of 64.2 per cent of federally incarcerated women are single mothers. At the provincial and territorial levels, neither of the detention centres that the Special Rapporteur visited had in place any child and mother programmes.<sup>34</sup> In an investigation conducted in 2016–2017 by the Office of the Correctional Investigator among women in maximum security prisons, 90 per cent reported being segregated during their detention and 83 per cent also reported having mental health problems that, as highlighted also by the Canadian Human Rights Commission, are often exacerbated during their placement in segregation.<sup>35</sup>

65. In the case of 19-year-old Ashley Smith, who was found dead in her segregation cell, staff members were charged for alleged assault or criminal negligence. Although the charges were stayed because of the administrative directive of Correctional Service Canada to staff not to assist Ms. Smith, the jury, following an inquest into her death, ruled her death a homicide and made 104 recommendations.<sup>36</sup>

66. Incarceration as a response to women with mental health conditions is against international human rights standards, and there is an urgent need to provide alternatives to

<sup>30</sup> Betty Ann Adam, “Saskatoon Health Region apologizes for forced tubal ligations, says report ‘provides clear direction’”, *Saskatoon StarPhoenix*, 28 July 2017.

<sup>31</sup> See also Dr. Yvonne Boyer and Dr. Judith Bartlett, “External review: tubal ligation in the Saskatoon Health Region: the lived experience of aboriginal women” (July 2017).

<sup>32</sup> See [www.csc-scc.gc.ca/research/err-16-23-eng.shtml](http://www.csc-scc.gc.ca/research/err-16-23-eng.shtml). See also [www.caefs.ca/wp-content/uploads/2013/05/csc-revw.pdf](http://www.caefs.ca/wp-content/uploads/2013/05/csc-revw.pdf).

<sup>33</sup> See [www.caefs.ca/wp-content/uploads/2013/05/csc-revw.pdf](http://www.caefs.ca/wp-content/uploads/2013/05/csc-revw.pdf).

<sup>34</sup> See Feminist Alliance for International Action and others, “Discrimination against indigenous and racialized women in Canada”, submission to the Committee on the Elimination of Racial Discrimination (2017), and Canadian Association of Elizabeth Fry Societies, “Long term effects of abuse and trauma”.

<sup>35</sup> See [www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf](http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf).

<sup>36</sup> See [www.chch.com/wp-content/uploads/2013/12/2013-1219-AshleySmithVerdict.pdf](http://www.chch.com/wp-content/uploads/2013/12/2013-1219-AshleySmithVerdict.pdf).

imprisonment for women with mental health conditions by transferring prisoners to mental health services, facilities or psychiatric hospitals.

### **Overincarceration of indigenous women**

67. The overincarceration of indigenous people is among the most pressing social justice and human rights issues in Canada. The number of federally sentenced indigenous women increased from 168 in March 2009 to 270 in March 2018. At the end of the reporting period, 40 per cent of incarcerated women in Canada were of indigenous ancestry, numbers that were described as “distressing”.<sup>37</sup>

68. Indigenous women are also overrepresented in segregation and, as a result, have limited to no access to programmes, education, training or access to justice or alternatives to incarceration. They are more likely to be considered high risk and high need and are classified as having low reintegration potential, in addition to being released later in their sentences. Canada has legislation that allows for the “decarceration” of prisoners, yet it is rarely used, and segregation remains a widespread practice.

69. In compliance with the Criminal Code, following the decision in *R v. Gladue*, judges should consider the background circumstances of indigenous offenders.<sup>38</sup> Some provinces and territories now use “aboriginal social history reports” to give judges information on the lives of indigenous people before sentencing. There are warnings, however, that such reports remain poorly understood and sometimes simply reinforce stereotypes and undermine the agency of the offender.<sup>39</sup>

70. In addition to the provisions in the Criminal Code requiring that judges consider “all available sanctions, other than imprisonment” for offenders, sections 81 and 84 of the Corrections and Conditional Release Act relating to federal corrections allow women to execute the sentence in their community or apply for early release to an indigenous community. Unfortunately, this legislation is underutilized, underfunded and often not communicated to women as part of their intake process.

## **H. Situation of women who encounter multiple and intersecting forms of discrimination and violence**

71. During her visit, the Special Rapporteur paid special attention to the situation of women and girls who encounter multiple and intersecting forms of discrimination and violence and experience higher rates of all forms of violence against women.

### **1. Violence against indigenous women and girls**

72. The Government of Canada has recognized that the basic inequalities that exist between indigenous people and the rest of the Canadian population are a reminder of the failure by the State to overcome systemic racism, the intergenerational trauma resulting from colonialism and the inadequate provision of specialized services and programmes for each community.

73. Indigenous people from First Nations, Métis and Inuit communities represent approximately 5 per cent of population of Canada, with indigenous women accounting for about half of that total. Indigenous women and girls, however, are three times more likely to be victimized by violence, including intimate partner violence and violent crime, and approximately six times higher to be a victim of female homicide.<sup>7</sup>

74. According to information from the Native Women’s Association of Canada, more than 4,000 indigenous women and girls have been murdered or reported missing since the

<sup>37</sup> See <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20172018-eng.aspx#s6>.

<sup>38</sup> See <https://theyee.ca/News/2018/11/21/Failing-Indigenous-Offenders/>.

<sup>39</sup> See Toni Williams, “Intersectionality analysis in the sentencing of aboriginal women in Canada: what difference does it make?”, in *Intersectionality and Beyond: Law, Power and the Politics of Location*, Davina Cooper and others, eds., (London, Routledge, 2008).

1970s. According to the Royal Canadian Mounted Police, indigenous women represented 11 per cent of missing women in 2013 and 16 per cent of victims of homicide nationally between 1980 and 2012.<sup>40</sup> According to estimates, more than half of victims of sex trafficking are indigenous women and girls. Suicide rates are high among indigenous people, particularly for young people from First Nations (five to seven times higher than for non-indigenous young people) and Inuit young people (11 times the national average).<sup>41</sup>

75. Indigenous women are disadvantaged within their societies and at the national level. They face marginalization, exclusion and poverty because of institutional, systemic, multiple and intersecting forms of discrimination that have not been addressed adequately by the State. Universal access to social and community-based services and infrastructure is not adequate for indigenous people, particularly for those living in rural and remote areas, where access to safe and clean drinking water, education, health-care facilities, adequate housing and employment represents a challenge.

76. The Special Rapporteur welcomes the Action Plan to Prevent Family Violence and Violent Crimes against Aboriginal Women and Girls (2015–2020), which outlines concrete action on the prevention of violence, support for victims and protection. The Action Plan, however, lacks a holistic approach and does not fully address the concerns of the Committee on the Elimination of Discrimination against Women, which in 2015 found that indigenous women had been subjected to grave human rights violations and emphasized the long-lasting social and economic disadvantages, biases and racism in the administration of justice, policing, data collection, jails and penitentiaries and social programmes (CEDAW/C/OP.8/CAN/1). Indigenous people in Canada have also been discriminated against historically, even under the law. The Indian Act is a colonial and patriarchal document at its core, embedded with historical racial and sex-based discrimination. Its treatment of First Nations women as secondary to men allows violence to be perpetrated against them. It works to systemically reduce the number of recognized First Nations people by discriminating against First Nations women and their descendants, denying them entitlement to Indian status on the same footing as their male counterparts. This discrimination and hierarchy among status exacerbates collateral violence within communities, as well as jurisdictional and logistical barriers for First Nations people to gain access to services. The 2011 and 2017 reforms to the Indian Act have fallen short of providing equality to First Nations women and their descendants, which further results in unequal access to benefits and services.

77. On several occasions, the Committee on the Elimination of Discrimination against Women, the Human Rights Committee and the Inter-American Commission on Human Rights have recognized that sex discrimination in the Indian Act is a root cause of violence and called for the urgent elimination of the legal provisions that discriminate against First Nations women and their descendants. Bill S-3 was passed in 2017 in response to the Descheneaux decision of the Quebec Superior Court, which found that the Indian Act unjustifiably violated equality rights under the Canadian Charter of Rights and Freedoms. Because the Senate of Canada insisted that the Government of Canada should go beyond the requirements of Descheneaux and remove the core discrimination embedded in the sex-based hierarchy between full status (Indian Act, sect. 6 (1) (a)) and partial status (sect. 6 (1) (c)), the Government included provisions in bill S-3 that would have that effect. Those provisions, however, were not brought into force in 2017.

78. The Special Rapporteur welcomes the decision issued on 14 January 2019 by the Human Rights Committee in favour of Sharon McIvor. The Committee held that the sex-based hierarchy between sections 6 (1) (a) and 6 (1) (c), introduced in the Indian Act and continued following the amendments of 2011 and 2017, violated the right to equal protection under the law without discrimination based on sex and violated the equal right of men and women to the enjoyment of indigenous culture, guaranteed under the International Covenant on Civil and Political Rights. The Committee also found that Canada was

<sup>40</sup> See [www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-national-operational-overview](http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-national-operational-overview).

<sup>41</sup> See [www.canada.ca/en/indigenous-services-canada/services/first-nations-inuit-health/health-promotion/suicide-prevention.html](http://www.canada.ca/en/indigenous-services-canada/services/first-nations-inuit-health/health-promotion/suicide-prevention.html).

obligated to provide full reparation and to take steps to address residual discrimination based on sex arising from the Indian Act (CCPR/C/124/D/2020/2010).

79. For a century, and on the basis of discriminatory policies and practices, indigenous children have been taken away from their families, alienating them from their traditional culture, language and social relations and support network. Notwithstanding the residential schools era and the so-called “Sixties Scoop”,<sup>42</sup> the Special Rapporteur was informed that the forced separation of indigenous children from their families continued to be a persistent harmful practice embedded in the Canadian child welfare system. While only 7.7 per cent of all children under 14 years of age are indigenous, they represent the 52.2 per cent of all children in foster care.

## 2. Inquiry on indigenous women

80. Evidence and emblematic cases show that violence against indigenous women in Canada is rooted in racial discrimination<sup>43</sup> and intergenerational trauma, which has not yet been adequately acknowledged or addressed. This discrimination takes the form of both overt cultural prejudice and implicit or systemic biases in the policies and action of government officials and agencies or of society as a whole, which results in a failure to provide indigenous women the protection from violence that is every woman’s human right.<sup>44</sup> It is therefore crucial to provide a human rights-based approach to discrimination and violence against indigenous women and to promptly investigate all the cases of missing and murdered women in the country.

81. In its 2015 report (CEDAW/C/OP.8/CAN/1), the Committee on the Elimination of Discrimination against Women recommended that the Government of Canada establish a national public inquiry into cases of missing and murdered indigenous women and girls. The Special Rapporteur welcomed the dialogue and ongoing healing process initiated with the launch of the National Inquiry into Missing and Murdered Indigenous Women and Girls but called for urgent action on other recommendations contained in the Committee inquiry report.

82. During her visit, the Special Rapporteur received updated information on the work of the National Inquiry into Missing and Murdered Indigenous Women and Girls, which has continued, for almost two years, to collect many testimonies nationwide and plans to hold expert hearings on a human rights framework and racism. The subjects of these hearings, which will be conducted on the basis of a “families-first” approach,<sup>45</sup> are government services and policing.

83. The Special Rapporteur considers the National Inquiry into Missing and Murdered Indigenous Women and Girls to be an important mourning and healing process that has opened a vital dialogue on past and current racist and colonial policies. Several concerns have been raised, however, about the limited mandate of the National Inquiry, including on child welfare. In March 2018, the federal Government, the 10 provincial governments and the 3 territorial ones were asked to grant a 24-month extension of the mandate of the National Inquiry, from December 2018 to December 2020. The governments agreed to a shorter extension, of six months, ending in June 2019.

<sup>42</sup> The “Sixties Scoop” refers to the decades-long former practice of indiscriminately removing indigenous children from their homes and putting them in foster care or up for adoption.

<sup>43</sup> Pamela Palmater, “Shining light on the dark places: addressing police racism and sexualized violence against indigenous women and girls in the national inquiry”, *Canadian Journal of Women and the Law*, vol. 28, No. 2 (August 2016), pp. 253–284.

<sup>44</sup> See Amnesty International, “Stolen sisters: a human rights response to discrimination and violence against indigenous women in Canada” (2004), and “Violence against indigenous women and girls in Canada: a summary of Amnesty International’s concerns and call to action” (2014).

<sup>45</sup> See, for example, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Our Women and Girls are Sacred: Interim Report* (2017), and National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (2019).

84. During her visit, the Special Rapporteur was informed of the work of the inquiry in Quebec dealing with the investigation of misconduct and violence of police forces against indigenous women in the province. The mandate of the inquiry includes investigating specific cases. She has also been made aware of a similar request for an inquiry in relation to the death of an indigenous woman, Tina Fontaine, in Winnipeg. The request included the need to examine the failure of the entire social child welfare and criminal justice system to protect children under their responsibility.

### **3. Violence against women and girls with disabilities**

85. In line with of the most recent concluding observations to the State party under the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights, the Special Rapporteur expressed serious concern about the high incidence of violence against women and girls with disabilities. Although all relevant federal and provincial legislation already prohibits violence against persons with disabilities, the law has not been successful enough in the prevention of or reduction in violence. On the basis of information received and the shelters that she visited, services for assistance and home support or adapted transportation lack accessibility for women with disabilities.<sup>46</sup>

86. Women with disabilities are at risk of many forms of violence: neglect, physical, sexual and psychological abuse and financial exploitation. Because there is a lack of accessible and affordable housing, women with disabilities are forced into institutions and become more vulnerable to abuse. They are twice as likely as women without disabilities to be victims of violent crime and to be sexually assaulted,<sup>47</sup> and they are particularly vulnerable to being trafficked for the purposes of sexual and labour exploitation.

87. According to the British Columbia Aboriginal Network on Disability Society, the rate of disability among indigenous persons in Canada is two to three times higher than the national rate. Indigenous women and black women with disabilities are also overrepresented in the prison population, and among victims of trafficking and the homeless population.

88. The lack of comprehensive data on violence against women with disabilities stems from a lack of self-reporting by women victims with disabilities. This is due to the stigmatization faced by them because they are women with disabilities, which is exacerbated by factors such as race and age.

### **4. Violence against women asylum seekers and refugees**

89. The Special Rapporteur acknowledged the long-standing policy of Canada to welcome immigrants. During her visit, however, she collected information about immigration and refugee policies and practice carried out by the Canada Border Services Agency, under which women, including pregnant women, and children can be detained indefinitely.

90. Migrant women are made more vulnerable to violence and abuse through their employment relationships, precarious migration status, gendered pathways to migration and being survivors of gender-based violence, as well as discriminatory policies concerning child custody and protection. Such vulnerability is even worse for black women, LGBTQ2 individuals and women with disabilities.

91. Although gender is not explicitly grounds for refugee protection under the Convention relating to the Status of Refugees, the Immigration and Refugee Board of Canada has interpreted gender to be one of the enumerated grounds as a “particular social group”. Under section 96 of the Immigration and Refugee Protection Act, a convention refugee must establish a well-founded fear of persecution for reasons of membership in a specific social group and must show that they are unable or unwilling to avail themselves of

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<sup>46</sup> Submission by DisABLE Women’s Network Canada.

<sup>47</sup> See Statistics Canada, “Criminal victimization in Canada, 2014” (2015).



the protection of their country of origin. Although section 97 of the Act was meant to bring it into line with the international obligations of Canada under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur highlights that a number of studies have shown that, in practice, Refugee Protection Division adjudicators fail to assess the gendered aspects of a claimant's fear of persecution for gender-based violence and will instead suggest that these women are fleeing from a generalized risk of crime. This is a result of the failure to clearly enumerate gender as a separate basis on which refugee status can be claimed.

92. Of concern is the inability of migrants and refugee victims of violence to gain access to a separate permit permission and available services and assistance, including legal aid. Women who arrive in Canada as sponsored spouses are often unable to leave sponsored relationships that have become violent, as a result of application criteria that fail to consider the realities of abused women.

## **5. Violence against rural women**

93. In 2016, 16 per cent of the population of Canada lived in rural areas, where some 24 per cent of violent crime, 18 per cent of property crime, 23 per cent of other Criminal Code offences, 32 per cent of impaired driving and 22 per cent of drug crime occurred. As noted, some types of crimes are overrepresented, and victimization rates are highest for women in rural areas, including concerning violent crime. For 2017, police-reported rates of violent crime were higher for women of all age groups in rural than in urban areas. Crimes committed by intimate partners are also disproportionately high in rural areas.

94. Among the issues exacerbating violence against women in the rural context are social isolation, access to weapon and unregulated fire arms, the lack of legal representation and of Internet access, limited public transportation and day-care services, and economic crisis and poverty. The lack of access to services for women and confidentiality when reporting abuses and social and cultural psychological isolation also exacerbate violence against women and girls in rural areas, including in terms of the underreporting of violence.

## **VI. Conclusions and recommendations**

95. **Based on the above findings and in a spirit of cooperation and dialogue, the Special Rapporteur, in whose mandate Canada played a leading role in establishing, offers the Government of Canada the following recommendations:**

(a) **With respect to the international framework on women's rights, ratify the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women and the Optional Protocol to the Convention against Torture;**

(b) **Effectively and fully harmonize laws at all levels of national jurisdiction with the Convention on the Elimination of All Forms of Discrimination against Women and, with regard to indigenous women, with the United Nations Declaration on the Rights of Indigenous Peoples;**

(c) **Consider enacting a federal law on combating and preventing violence against women and domestic violence, based on the Convention on the Elimination of All Forms of Discrimination against Women, general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, the Declaration on the Elimination of Violence against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women;**

(d) **Harmonize legislation on violence against women and domestic violence in all federal, provincial and territorial jurisdictions in line with the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women and other international and regional human rights instruments, and commit itself to ensuring that feminist and equality-seeking groups are systematically involved in the framing and monitoring of all the law reform initiatives on violence against women;**

(e) In the light of the Special Rapporteur's findings, there is an urgent need for a more comprehensive and holistic national action plan on violence against women, ensuring that women and girls in all areas of the country have access to comparable levels of services and human rights protection. The Government of Canada should therefore adopt, in cooperation with independent human rights institutions and civil society organizations, a national action plan on violence against women and domestic violence, based on human right standards on prevention, services and the prosecution of violence against women accepted by Canada, such as the Convention on the Elimination of All Forms of Discrimination against Women and general recommendation No. 35 of the Committee on the Elimination of Discrimination against Women;

(f) Adopt a national action plan on violence against indigenous women or formulate it as a separate part of the recommended national action plan on violence against women and domestic violence, and ensure that this national action plan provides the same level of protection nationwide based on the implementation of international human rights standards and the recommendations contained in the 2015 report of the Committee on the Elimination of Discrimination against Women (CEDAW/C/OP.8/CAN/1).

96. Concerning the situation of violence against indigenous women, the Special Rapporteur also reiterates her full endorsement of previous recommendations of the Committee on the Elimination of Discrimination against Women and calls for their full implementation. In particular, she recommends that the Government of Canada:

(a) Urgently repeal the remaining provisions in the Indian Act and any other national law and practices that discriminate against indigenous women and girls;

(b) Adopt measures to improve the socioeconomic conditions of indigenous women and girls and provide adequate funding to support dedicated indigenous-based holistic community support services;

(c) Review family laws and the Divorce Act to ensure that domestic violence is given primary consideration when a decision about child custody occurs and that protection orders are easily enforceable in all provinces and territories, while guaranteeing the freedom of movement to survivors;

(d) Take the legislative or other measures necessary to ensure that a woman victim of violence is not criminalized when seeking State protection and that the exercise of any visitation or custody rights does not jeopardize the rights and safety of the women who are victims of violence, or their children;

(e) Review, through a gender lens, gun control legislation in order to harmonize it with the Convention on the Elimination of All Forms of Discrimination against Women;

(f) As enshrined in the Convention on the Elimination of All Forms of Discrimination against Women, provide awareness-raising and training programmes on women's rights and violence against women, including on sexual violence and harassment, addressed to law enforcement officials, social and health workers, teachers and the general public, including information and guidelines on the specific needs of indigenous women, LGBTQ2 individuals, women with disabilities and other women belonging to groups that are a target of violence;

(g) Strengthen existing coordination mechanisms on human rights or establish a new coordinating mechanism (composed of federal, provincial and territorial ministers for human rights) for the coordination and implementation of human rights obligations and recommendations arising from international and regional human rights mechanisms (United Nations treaty bodies, special procedures, the Inter-American Commission on Human Rights and independent human rights commissions), with the constructive participation of civil society and indigenous representatives;

(h) Ensure systemic and comparable national data collection on all manifestations of gender-based violence against women and girls and femicide, as well as specific information on violence against women and the femicide of indigenous women, establish and provide support to existing femicide watch or observatories, including indigenous women's femicide observatories, and ensure that such observatories focus on prevention through a human rights-based analysis of cases, as recommended in the thematic report of the Special Rapporteur on modalities for the establishment of femicide observatories (A/71/398);

(i) Ensure the collection of data on trafficking in women and girls, including indigenous women and LGBTQ2 people;

(j) Establish the adequate number and distribution of and sustainable funding for culturally appropriate victim's services, shelters and second-stage affordable housing facilities dedicated to women victims of violence, giving due consideration to the specific needs of women belonging to vulnerable groups, in line with the recommendations of the Special Rapporteur contained in her report (A/HRC/35/30), which encompass the establishment of specific shelters and services tailored to indigenous women and communities, including those living in remote areas, which should be run by them;

(k) In order to strengthen its framework on sexual assault and the criminal justice system, improve, in cooperation with provinces and territories, criminal justice responses to survivors, including by providing free legal aid at the federal, provincial and territorial levels;

(l) Ensure consistency in policy and legislation in all jurisdictions in order to promptly address sexual violence on university campuses and in schools;

(m) Investigate all allegations of forced or coerced sterilization, with attention given to cases involving indigenous women and girls, ensuring justice and remedies, including reparations to survivors and their families, explicitly prohibiting sterilization without free, full and informed consent and enforcing health-care professional accountability;

(n) Establish a consistent approach in all jurisdictions regulating online violence against women and the prohibition of the non-consensual distribution of intimate images by implementing best practices from Canada and the related recommendations of the Special Rapporteur (A/HRC/38/47);

(o) Ensure that relevant labour legislation addresses the full spectrum of violence and harassment against women in the world of work and that it does so consistently across jurisdictions, covering all women workers, including migrant workers;

(p) Amend the Immigration and Refugee Protection Act to guarantee protection to survivors of trafficking and offer adequate support to trafficked persons, as well as faster access to permanent residence, increase access to information about temporary residence permits to victims of human trafficking and streamline applications for permanent residence;

(q) Enable women migrant workers to have open work permits, or regional or sectorial work permits, and end the practice of issuing conditional work permits or those difficult to obtain;

(r) Provide resources to assist migrant women in filling out their forms in order to prevent misinformation, including funding non-governmental organizations to provide such assistance;

(s) Fully implement the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the latter of which provides guidance for women in prison;

(t) In compliance with the above-mentioned rules, institute a ban on solitary confinement, segregation, intensive psychiatric care, strip searching and all other related forms of isolation of women in detention, including young women, women with mental health issues and indigenous women, who experience high rates of segregation, and guarantee that mother and child and rehabilitation programmes are always in place;

(u) Reduce the overcrowding of detention centres, ensuring that sections 81 and 84 of the Corrections and Conditional Release Act relating to federal corrections are consistently applied, and give preference to alternatives to imprisonment for prisoners with severe mental health issues by transferring such prisoners to mental health services, facilities or psychiatric hospitals, pursuant to existing and/or potential exchange of service agreements between the federal, provincial and territorial health authorities;

(v) Take concrete steps to eliminate the overrepresentation of indigenous women in custody (and correctional facilities for indigenous girls) in custody, issue detailed annual reports to monitor and evaluate progress in doing so, and stop classifying them, when they are detained, as having a low potential to reintegrate;

(w) Address the disproportionately high number of indigenous children institutionalized by child welfare authorities, which renders Indigenous women more vulnerable to violence, given that they are reluctant to seek help from authorities for fear that their children may be taken away from them;

(x) In collaboration with all levels of jurisdictions, establish the civilian oversight of police as an important step in monitoring the police response to sexual assault and sexual assault survivors, especially indigenous women and girls;

(y) Establish an independent civilian oversight body for the Royal Canadian Mounted Police to monitor the police response to sexual assault and sexual assault survivors, especially indigenous women and girls;

(z) Support an external review, in cooperation with civil society and indigenous communities, of the disproportionately high levels of racism, abuse and violence towards indigenous women and girls by police and correctional officers, with a view to implementing preventive measures and enforcing institutional accountability on a concept of zero tolerance for the excessive use of force and sexual harassment or assault.

97. Concerning women with disabilities, the Government of Canada should fully align policies and legal framework with the recommendations made by the international human rights mechanisms and provide a comprehensive assessment of the situation of girls and women with disabilities in Canada.

98. Concerning women refugees and asylum seekers, the Government of Canada should:

(a) Amend immigration and refugee policies to end the practice under which women, including pregnant women, and children can be detained indefinitely, and the Government should also put in place an independent oversight mechanism to monitor the Canada Border Services Agency and its detention policies in order to deal with complaints of violence and abuse towards women in detention;

(b) Adopt measures that will facilitate the process of the regularization of migrant status based on humanitarian and gender-based violence against women grounds, in line with the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

99. Concerning the protection LGBTQ2 women victims of stigmatization and violence and of lesbian, gay, bisexual, transgender and intersex rights, the Government of Canada should increase the provision of and funding for support services that are culturally relevant and community- and survivor-based.