

**Mandates of the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and the Special Rapporteur on violence against women, its causes and consequences**

REFERENCE:  
AL CAN 4/2021

7 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 42/20, 43/36, 41/18, 45/10 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **delay in elaborating a plan of action to implement the recommendations formulated in the 2019 Final Report of the National Inquiry on Missing and Murdered Indigenous Women and Girls and in addressing the systemic causes of violence against indigenous women and girls, as well as Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual (2SLGBTQQA) people in Canada.**

According to the information received:

In June 2019, the report *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* was published after three years of a truth-gathering process, including community hearings and visits, institutional hearings and knowledge-keeper and expert hearings. The broad scope of the National Inquiry's mandate allowed it to address a range of inter-related issues concerning all forms of violence against Indigenous women and girls, and 2SLGBTQQA people in a holistic manner.<sup>1</sup> The report contains 231 Calls for Justice, described as non-optional legal imperatives arising from international and domestic human and indigenous rights laws.<sup>2</sup> The recommendations are targeted at redressing past human rights wrongs and avoiding their repetition across an array of social themes. They are addressed to a wide range of societal actors including the media and other social influencers, police, health and wellness providers, attorneys and law societies, educators, extractive and development industries and the prison service.

Previous independent inquiries into the treatment of indigenous persons in Canada appear to have had limited or no implementation of their recommendations and lacked follow-up. For example, the proposals for reform

<sup>1</sup> NIMMIWG, *Reclaiming Power and Place, Volume 1a*, 58.

<sup>2</sup> NIMMIWG, *Reclaiming Power and Place, Volume 1b*, 168.

to repair the relationship between Canada and indigenous peoples put forward by the Royal Commission on Aboriginal Peoples Inquiry were effectively left unanswered since 1996.<sup>3</sup> In 2015, the Truth and Reconciliation Commission of Canada made 94 calls for action to redress the legacy and patriarchal and racist foundations of the residential school system; reportedly, only 10 of the calls for action were fully implemented.<sup>4</sup>

The Final Report of the National Inquiry identifies colonization, racism and sexism as the root causes behind Canada's staggering rates of violence against Indigenous women, girls and 2SLGBTQIA people that it described as genocide and concludes that "colonial violence, racism, sexism, homophobia, and transphobia [...] have become embedded in everyday life – whether this is through interpersonal forms of violence, through institutions like the health care system and the justice system, or in the laws, policies and structures of Canadian society".<sup>5</sup> It also highlights the "multigenerational and intergenerational trauma and marginalization in the form of poverty, insecure housing or homelessness and barriers to education, employment, health care and cultural support" and points to "specific colonial and patriarchal policies that displaced women from their traditional roles in communities and governance and diminished their status in society, leaving them vulnerable to violence".<sup>6</sup> The report stresses that "many Indigenous people have grown up normalized to violence, while Canadian society shows an appalling apathy to addressing the issue".<sup>7</sup>

The National Inquiry stresses that women and girls should not be treated solely as victims, but as independent rights holders, that families and survivors should be included in the implementation of the Calls for Justice and that solutions must be led by Indigenous governments, organization and peoples.<sup>8</sup>

According to the information received, on 3 June 2021 the Government of Canada published its response to the 2019 Final Report to the National Inquiry into Missing and Murdered Indigenous Women and Girls. The government's implementation plan is forthcoming. The government's National Action Plan is limited to three pages in length and refers to another document outside of the National Action Plan, entitled the Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQIA People. A number of Indigenous and civil society actors, several former National Inquiry Commissioners, and family members have allegedly criticized the plan's lack of substance and little progress in implementing the 231 Calls for Justice.

Concerns have been raised that the National Action Plan focuses on short-term goals, which primarily relate to the follow-up process and not the content and full conditions of the 231 Calls for Justice. Furthermore, the Government of Canada's Federal Pathway does not allegedly indicate a viable way forward on how, when, and by whom the Calls for Justice as a whole will be acted upon in

---

<sup>3</sup> Royal Commission on Aboriginal Peoples, *Highlights of the Report of the Royal Commission on Aboriginal Peoples Inquiry - People to People, Nation to Nation* (Minister of Supply and Services Canada 1996)

<sup>4</sup> CBC News' *Beyond 94: Truth and Reconciliation in Canada* research database:

<https://newsinteractives.cbc.ca/longform-single/beyond-94?cta=1>

<sup>5</sup> [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive\\_Summary.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf) p. 4

<sup>6</sup> <https://www.mmiwg-ffada.ca/final-report/>

<sup>7</sup> [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive\\_Summary.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf) p.4

NIMMIWG, *Reclaiming Power and Place, Volume 1b*, p. 169 and 171.

practice and how they will be financed.

Our mandates communicate to you our concern about allegations we have received of lack of timely progress, and lack of transparency about projected timelines, in formulating and implementing an effective response of the government of your Excellency to the conclusions of the inquiry, even while indigenous women and girls, as well as 2SLGBTQQIA people, continue to be the targets of violence at a significant higher rate than the rest of the population. While we do not prejudge the accuracy of the allegations we have received, the depth of our concerns causes us to write at this time to request detailed information from the Government.

We are concerned that the delays and lack of progress reported to us appear to be resulting in a disregard for the systemic causes of all forms of discrimination and violence, including sexual violence, against indigenous women, girls, and 2SLGBTQQIA people. Moreover, we are concerned that indigenous women, girls, and 2SLGBTQQIA people will continue to be deprived of reparation for abuses and violations they suffered in the past. In view of the ongoing COVID-19 public health emergency as well as the reported inadequacy of follow-up to previous State-initiated inquiries, we are concerned that swift, concrete and meaningful follow-up to the legal imperatives set out in the National Inquiry's 231 Calls for Justice may be left unanswered. Conscious that the COVID-19 pandemic has further marginalized and impacted heavily upon indigenous women, girls, and 2SLGBTQQIA people worldwide, we urge you to ensure that this follow-up is undertaken without further delay.

We recognize that the challenges arising from the COVID-19 pandemic may have required adaptations of the consultation and decision-making processes by which the Government developed the National Action Plan.<sup>9</sup> However, given the urgency of responding to the National Inquiry Calls for Justice, the range of technical and other alternatives for conducting such processes in a safe and timely manner that have been recognized and implemented globally, we remain concerned about the allegation that at present there is no substantial and effective timetable for moving the process forward or the implementation of the National Action Plan.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the timeframe for adoption of the government's plan of action to implement the 231 calls for justice put forward in the Final Report of the National Inquiry.

---

<sup>9</sup> We are aware of the general information set out at: <https://www.rcaanc-cirnac.gc.ca/eng/1590950479157/1590950564663>

3. Please indicate what concrete follow-up measures are to be undertaken to address the causes and consequences of systematic violence and discrimination experienced by indigenous women, girls and 2SLGBTQQIA people, in Canada, in accordance with the National Inquiries conclusions and calls for justice. How does the government plan to ensure such measures are gender and culturally sensitive, and answer the specific needs of each indigenous community? How were indigenous women and girls included in the design of the National Action Plan?
4. How does the National Action Plan ensure an empowering role for indigenous women girls and 2SLGBTQQIA people, in redressing the situation of violence they are experiencing?
5. Please indicate or provide detailed information or provisions on how, when, and by whom the 231 Calls for Justice will be addressed in practice, including how they will be financed, with respect to the National Action Plan.
6. Please indicate whether and how the conclusions of previous commissions of inquiry, such as the Royal Commission on Aboriginal Peoples Inquiry from 1996<sup>10</sup>, and the Truth and Reconciliation Commission of Canada from 2015, will be given concrete follow up.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

José Francisco Cali Tzay  
Special Rapporteur on the rights of indigenous peoples

E. Tendayi Achiume  
Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance

Victor Madrigal-Borloz  
Independent Expert on protection against violence and discrimination based on sexual  
orientation and gender identity

Fabian Salvioli  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of  
non-recurrence

Dubravka Šimonovic  
Special Rapporteur on violence against women, its causes and consequences

---

<sup>10</sup> Royal Commission on Aboriginal Peoples, *Highlights of the Report of the Royal Commission on Aboriginal Peoples Inquiry - People to People, Nation to Nation* (Minister of Supply and Services Canada 1996)

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. Canada has ratified international treaties relevant to the rights of indigenous peoples, including the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter, "ICERD") (ratified by Canada on 14 October 1970), the Convention on the Elimination of All forms of Discrimination against Women (hereinafter "CEDAW") (ratified by Canada on 10 December 1981) and the International Covenant on Civil and Political Rights (hereinafter, "ICCPR") (acceded to by Canada on 19 May 1976).

Your Excellency's government has also endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration on the Rights of Indigenous Peoples is not in itself a legally binding instrument, but it is nonetheless an elaboration and extension of the obligations and commitment assumed by United Nations Member States – including Canada – to promote and respect human rights under the United Nations Charter, customary international law, and multilateral human rights treaties to which Canada is a Party. As a universal framework setting out the minimum standards of protection of indigenous peoples' rights, the Declaration establishes, at article 7, the right of indigenous women, children, and LGBT people to life, physical and mental integrity, and at article 24, their right to access, without any discrimination, all social and health services, and to the equal enjoyment of the highest attainable standard of physical and mental health. The UNDRIP recognizes that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity (article 2); affirms the right of indigenous women and children to enjoy the full protection and guarantees against all forms of violence and discrimination (article 22.2), and requires States to take special measures to ensure continuing improvement of their economic and social conditions (article 21.2). Article 40 provides for indigenous peoples' right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, and their right to effective remedies for all infringements of their individual and collective rights, in accordance with their customs, traditions, rules and legal systems and with international human rights.

Hate-motivated violence against LGBT people is perpetrated by both States and non-State actors. Failure by State authorities to investigate and punish this kind of violence is a breach of States obligation to protect everyone's right to life, liberty and security of persons, as guaranteed by international human rights standards, such as articles 3 and 14 (1) of Universal Declaration of Human Rights ("hereinafter "UDHR"), articles 6 and 9 of ICCPR, article 19 (1) of the Convention on the Rights of the Child (ratified by Canada on 13 December 1991). Article 3(1) of the Convention against Torture (ratified by Canada on 24 June 1987), and article 4 of the Declaration on the Elimination of Violence against Women. In its General Comment 35, the Human Rights Committee has emphasised that States have an obligation to take appropriate measure to prevent and respond to acts of violence, as well as protect individuals from foreseeable threats to life of bodily integrity proceeding from State

or private actors (CCPD/C/GC/35, para 9).

Gender-based violence against women constitutes discrimination against women under article 1 of the CEDAW Convention and therefore engages all obligations under the Convention. Article 2 provides that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women. Article 2 (e) of the Convention explicitly provides that States parties are to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. That obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.

International human rights law contains guarantee of equal access to the law and equal protection before the law without discrimination of any kind (including that is based on sexual orientation or gender identity), as well as equal access to remedy for violations of rights (article 7 of UDHR, article 26 and 2 (3) of ICCPR, Human Rights Committee General Comment No. 20, CAT/C/GC/2).

In its General Recommendation No. 33, the CEDAW Committee highlights the importance of women's access to justice and reparation, irrespective of economic or social status, political background, geographical location, disability, sexual orientation or gender identity. Effective and timely remedies as well as adequate reparation must be guaranteed while ensuring that they respond to the different types of violations experienced by women, and that women participate in the design of all reparation programmes, as indicated in general recommendation No. 30 (para 19).

In its General Recommendation 35 on gender-based violence against women, the CEDAW Committee recognizes that the prohibition of gender-based violence has become a norm of international customary law; stresses the need to change social norms and stereotypes that support violence, in the context of a resurgence of narratives threatening the concept of gender equality in the name of culture, tradition or religion; clearly defines different levels of liability of the State for acts and omissions committed by its agents or those acting under its authority - in the territory of the State or abroad- and for failing to act with due diligence to prevent violence at the hands of private individuals and companies, protect women and girls from it, and ensure access to remedies for survivors; and emphasizes the need for approaches that promote and respect women's autonomy and decision-making in all spheres of life.

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity recommends that States recognize the value of gender-based approaches, and uphold rights related to gender and sexuality as universal and inalienable, indivisible, interdependent, and interrelated to all other rights (A/HRC/47/27, para 87). He also recommends that States redouble efforts to carry out monitoring and evaluation of gender-based approaches in public policy, law, and access to justice, and ascertain their efficiency and effectiveness in addressing and being conducive to eradicating gender-based violence and discrimination (Ibid., para. 93).

In a press statement of 20 April 2020, the Working Group on discrimination against women noted that, “as Governments attempt to tackle the unprecedented public health and economic crises caused by the COVID-19 pandemic, women and girls are suffering even more egregious violations of their human rights. In the absence of gender sensitive intersectional responses, different forms of systemic discrimination already faced by women and girls are exacerbated”. “The measures taken by Governments to mitigate the risks to health and life posed by COVID-19 must take into account the specific attributes and circumstances faced by women and girls”. “The crisis is an opportunity to address structural inequalities and deficits that have consistently held women back, and to re-imagine and transform systems and societies. In order to fully comprehend the gendered impact of the crisis, it is crucial to understand the structural discrimination underlying this emergency which is not only causing but exacerbating serious violations of women and girls’ human rights”. (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E>)

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity also notes that LGBT persons, who are already victims of violence and discrimination on the basis of their sexual orientation or gender identity, have been severely affected by the pandemic (A/75/258, paras 9 - 37). In light of it, he developed practical guidelines to help States in effectively fulfilling their obligations to prevent and mitigate the impact of COVID-19 on LGBT persons. These guidelines are based on six fundamental actions identified as good practices in designing, implementing and evaluating States’ measures to combat the crisis in order to protect LGBT persons, communities and populations (Ibid., paras 82-91. Also, please see the ASPIRE Guidelines on COVID-19: [https://www.ohchr.org/Documents/Issues/SexualOrientation/SOGI-GuidelinesCOVID19\\_EN.docx](https://www.ohchr.org/Documents/Issues/SexualOrientation/SOGI-GuidelinesCOVID19_EN.docx)).

As regards the ICCPR, article 2 established the duty of States to ensure that any person whose rights were violated has an effective remedy. The Human Rights Committee in its General Comment No. 31, para 8, addressing the possible scope of State responsibility under the ICCPR in relation to violence perpetrated by private persons, affirms that, “There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities...”. The General Comment further provides guidance on the essential characteristics of the investigations, effective remedies, and accountability measures, required in such circumstances (para 15 and 19).<sup>11</sup>

Article 2 of ICERD provides the obligation to States parties to condemn racial discrimination and to eliminate racial discrimination in all its forms. Article 5 establishes that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (iv) The right to public health, medical care, social security and social services.” As a result, States are required to take effective and, where necessary, special measures to guarantee indigenous people’s equal enjoyment of their internationally recognized rights. In addition, article

<sup>11</sup> <https://undocs.org/CCPR/C/21/Rev.1/Add.13>

6 requires that States Parties shall assure to everyone within their jurisdiction effective protection and remedies against any act of racial discrimination and to provide just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

The Committee on the Elimination of Racial Discrimination (CERD) reaffirms the obligations mentioned above and provides further guidance on these relevant domains in its General Recommendation No. 23 on the rights of indigenous peoples and No. 25 on the gender related dimensions of racial discrimination, No. 26 on article 6 of the Convention, and No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

We also note the relevance of such more general UN standards such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>12</sup> and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>13</sup>

---

<sup>12</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>

<sup>13</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>