
Missing and Murdered Indigenous Women and Girls in Canada (Ex Officio)

by Sydney Delin

Participating Organizations:

- Native Women's Association of Canada (NWAC)
- Canadian Feminist Alliance for International Action (FAFIA)
- Indigenous Governance Ryerson University, Toronto, Ontario, Quebec
- Native Women
- Jeremy Matson

The following is a summary of a hearing of the 173rd Period of Sessions at the Inter-American Commission on September 24, 2019. Several organizations participated at a hearing before the Inter-American Commission on Human Rights (IACHR) to update the IACHR on the high rates of murder and large number of missing women and children among Canada's First Nations populations. Both the participating organizations and the state of Canada acknowledged that there is a problem concerning the missing and murdered women and girls. However, Canada is currently in an election period and must wait until October 2019 before taking more concrete action in accordance with the "Caretaker Convention." Francois Jubinville, representative for Canada, appreciated the courage of those who shared experiences with the National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry),^[1] published June 2019, and was at the hearing to observe and to issue a written statement at a later date. As of January 27, 2020, there has been no such official statement but there have been remarks about the government's work with the First Nations to create a national plan with the help of the Organization of American States.^[2]

The high rate of missing and murdered indigenous women and girls in Canada is a result of political, economic, and social inequality dating back to colonialism.^[3] In September of 2016, Canada began a two-year independent inquiry into the high rates of missing and murdered women and children.^[4] The final report, known as the National Inquiry, is a compilation of testimonies from almost 2,400 individuals within a framework of Indigenous Rights.^[5] Recently, Canada passed provisions to Bill S-3 eliminating a discriminatory provision in the Indian Act that revoked "Indian Status" from women who married a man without that status.^[6] Bill S-3 reinstates 'Indian status' to those women and their children. This legislation came in response to the UNHRC case, *McIvor*

v. Canada, in which Sharon *McIvor* complained to the Human Rights Commission about the antiquated discriminatory legislation. At the hearing, *McIvor* and the Canadian Feminist Alliance for International Action (FAFIA) argued that sex discrimination against First Nation women and girls under the Indian Act is a root cause of violence as found by IACHR, CEDAW, and the National Inquiry.^[7] In previous reports, the IACHR expressed concern over the treatment of indigenous women and girls, including claims of forced sterilization and gender-based violence.^[8] Canada also met with the IACHR during its 167th period of sessions to discuss the situation of Human Rights of Indigenous Peoples in Canada.^[9] The IACHR came to Canada at the request of FAFIA in 2013 to investigate the situation of missing and murdered women and girls before issuing its first report in December 2014, bringing global attention to the issue.

Pam Palmater, the Chair for Indigenous Governance at Ryerson University and lawyer of Mi'kmaq background, explained how Canada created and maintained a structure that enabled violence against First Nations women and girls. Indeed, the National Inquiry found that these structures and policies enabled the genocide of Indigenous peoples.^[10] The President of Quebec Native Women Viviane Michel asserted that the government must work with the First Nations communities to create a national plan of action. Lorraine Whitman, president of the National Women's Association of Canada, asked for an expert body to come and support the First Nations in Canada. Whitman also wanted to see concrete actions and commitments from the Canadian government following the findings of the National Inquiry. The other organizations present echoed a request for a working visit from the IACHR.

Interim Representative of Canada at the OAS, Francois Jubinville, began his statement on behalf of the

State by acknowledging the important work of all the organizations present and recognized the strength of those who shared their stories with the inquiry. However, less than two weeks before this hearing, Prime Minister Justin Trudeau called for a federal election for October 2019.[11] The Caretaker Convention in Canada calls for the current government to restrict itself from exercising its authority, besides routine, non-controversial activity, during an election period to prevent binding action on the future government. [12] Because of this, Jubinville was not in a position to answer the questions from the Petitioners. He reiterated the goal of reconciliation between Canada and the First Nations, and he discussed what steps the government had taken, including the allocation of 50 million dollars in funding for the health and healing of survivors, for the commemoration of victims, for review of police practices, and for the creation of a national oversight body. He also noted the 1.7-billion-dollar funding of child care services for Indigenous families set to be distributed over the next ten years.[13] One of the largest steps Canada has taken from the recommendations given by the National Inquiry was amending Bill S-3, which eliminated sex discrimination from the Indian Act. Canada welcomed the IACHR and the international community's participation in advancing indigenous rights around the world.

The Commissioners were primarily concerned with setting up a working visit to Canada after the October 2019 election and stated that they look forward to helping Canada put together a national plan. Commissioner Margarete May Macaulay recognized Canada's first step of amending the Indian Act and acknowledged that Canada is constrained from acting until the October elections.[14] However, she thought an IACHR visit to Canada after the elections to work on a national plan would be important and encouraged participation at every level. Commissioner Flávia Piovesan listed three points of concern: the inclusion of indigenous voices in the process, the engagement of all levels of government, and the adoption of a gender perspective in a national plan. Commissioner Antonia Urrejola Noguera pointed out that Canada has not ratified the ILO's C169, the Indigenous and Tribal Peoples Convention.[15] She reiterated the importance of working on an action plan that looks at both gender issues and race discrimination against the First Nations. Commissioner Esmeralda Arosemena de Troitiño thanked the organizations for all their work and supported an IACHR visit to Canada. The Commissioners applauded the historic National Inquiry and looked forward to helping Canada create a national action plan. The National Inquiry into Missing and Murdered Indigenous Women and Girls concludes that "Canada's past and current colonial policies, actions and inactions towards Indigenous Peoples is genocide. And genocide, as per law binding on Canada, demands accountability." [16] Canada has ratified the Convention on the Prevention and Punishment of

the Crime of Genocide and is bound by it under international law.[17] Additionally, Canada is a member of the Organization of American States, though Canada has not yet signed the American Convention on Human Rights.[18] Although there may be delays due to the election, Canada's National Inquiry, the recent bill amendment, and a potential future visit from the IACHR show promise.

1 RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS (June 3, 2019), <https://www.mmiwg-ffada.ca/final-report/>.

2 Kristy Kirkup, Government Eyes June National Action Plan on Missing, Murdered Indigenous Women, THE GLOBE AND MAIL (Dec. 4, 2019), <https://www.theglobeandmail.com/politics/article-government-eyes-june-national-action-plan-on-missing-murdered/>.

3 NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS (JUNE 3, 2019), <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/News-Release-Final-Report.pdf>.

4 Human Rights Watch, World Report: Canada, <https://www.hrw.org/world-report/2018/country-chapters/canada>.

5 Reclaiming Power and Place, *supra* note 1.

6 Indian Act, R.S.C., 1985, c. I-5; Jennifer Greens, Indian Status Could be Extended to Hundreds of Thousands as Bill S-3 Provisions Come Into Force, CBC (Aug. 15, 2019).

7 IACHR Calls on the State of Canada to Address the Recommendations Issued by the National Inquiry into Missing and Murdered Indigenous Women and Girls in Order to Protect and Guarantee Their Human Rights, IACHR (June 25, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/159.asp.

8 IACHR Expresses Its Deep Concern Over the Claims of Forced Sterilizations Against Indigenous Women in Canada, IACHR (Jan. 18, 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/010.asp.

9 Canadá Pueblos Indígenas, Video of Session, IACHR (Mar. 14, 2018).

10 A LEGAL ANALYSIS OF GENOCIDE, Supplementary Report, NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS (2019), https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

11 PM Justin Trudeau Calls Canadian General Election for 21 October, BBC NEWS (Sept. 11, 2019), <https://www.bbc.com/news/world-us-canada-49656611>.

12 "Guidelines on the Conduct of Ministers, Ministers of State, Exempt Staff, and Public Servants During an Election," GOV'T OF CANADA (Sept. 2019), <https://www.canada.ca/en/privy-council/services/publications/guidelines-conduct-ministers-state-exempt-staff-public-servants-election.html>.

13 "Gender Equality Statement," GOV'T OF CANADA (BUDGET 2019), <https://www.budget.gc.ca/2019/docs/plan/chap-05-en.html>.

14 Jennifer Greens, *supra* note 7; "Guidelines on the Conduct of Minister," *supra* note 12.

15 International Labour Organization, Indigenous and Tribal Peoples Convention, June 27, 1989, C169.