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Women and the Invisible Hegemony of Institutions“

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For our stolen sisters.

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ABSTRACT

How has Canada systemically failed to uphold the rights of her Indigenous women? To what extent have national violence prevention efforts quelled the rise of the MMIWG (missing and murdered Indigenous women and girls) phenomenon? What are the societal and institutional barriers continuing to prevent indigenous women from availing themselves of national justice mechanisms?

In assessing these queries, it was found that women from Indigenous communities are at higher risk than non-Indigenous women to be exposed to racialized, sexualized violence; moreover, they remain trapped by a persistent lack of access to justice in the event of victimization. With the disproportionately high MMIWG numbers across the nation, the calls-to-action by Indigenous organizations have been supplemented with numerous recommendations on how to proceed with the national inquiry launched recently under the new Trudeau administration.

Despite the growing culture of insistence upon human-rights protection, emerging efforts in this regard have proved, more or less, to be a strategic give-and-take of political capital among engaged stakeholders. This paper examines how ongoing tensions between Canada's social, political and legal institutions result in outrageous implementation gaps in investigations and violence prevention, further distancing Indigenous women and girls from their rightful claim to safety and justice.

Procedural deficiencies in data collection and analysis; as well as existing legal infrastructure, and policing procedures; are deconstructed and evaluated against required standards of accountability in the contemporary MMIWG context. Once the pertinent gaps are outlined, a matrix of recommendations is designed to constructively inform needed federal and local reforms.

KEY TERMS

Indigenous women · MMIWG · Violence against women · Institutionalization · Justice

* * *

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* * *

METHODOLOGY

i. Data sources

For the purposes of obtaining more intensive exposure to relevant fieldwork for the topic at hand, I assumed the following roles:

- Violence Prevention & Safety Volunteer, Native Women's Association of Canada (NWAC)¹; and
- Visiting Researcher, Institute of Canadian and Aboriginal Studies (ICAS), University of Ottawa².

Apart from availing myself of the information, services and connections provided by these organizations to supplement my data collection, I also consulted reports, tools and literature, as well as other multimedia sources, issued by public and private Canadian and Aboriginal institutions with proven records of subject-matter expertise. Informants for interviews were also vastly valuable as resources and were selected on the basis of their work on MMIWG issues, including but not limited to media involvement, violence prevention strategies, safety mechanisms, policing / investigations, and/or information management, as relevant.

ii. Method of analysis

- Applicable legal human-rights instruments were used to inform the definitive scope for relevant concepts and principles, as needed.

¹ Term: Summer 2016.

² Same as above.

- A literature review was conducted to provide historical and analytical context for the trends of violence against indigenous women.
- Open-ended key-informant interviews were conducted to gauge the experiential value of individuals and institutions directly involved with work on indigenous affairs, violence prevention and safety, human-rights protection, and legal enforcement, as relevant.
- Case-law was studied and referenced to highlight systemic injustices suffered by women of Indigenous communities.
- Recent and current mechanisms and tools (being) developed / refined at indigenous and human-rights organizations were scrutinized for effectiveness and implementation value, in a results-oriented approach.

iii. Data limitations

There are a number of factors that limit the scope, quality and value of information collected for MMIWG reports and analyses. The reference material for this paper is subject to all such limitations (which either directly or indirectly inhibit collection of data) as outlined below:

- Historical lack of impetus at federal level to prioritize and fund indigenous studies.
- Lack of trust and understanding between investigative bodies and affected members of indigenous communities.
- Insufficient cohesion across comparison standards for database information (when accounting for discrepancies in information provided by different organizations concerned).

In terms of personal challenges to gathering information for this paper, I note the following:

- Privacy and confidentiality: When conducting key informant interviews, I found that a number of interviewees were, to a certain extent, hesitant to speak openly or be quoted on their thoughts and opinions regarding other stakeholders in the field. Some of the information gathered was struck from the record and as such, not included in this final publication. Moreover, contacted RCMP and police agents were unable to comment on specific MMIWG cases. Nonetheless, I found open, honest, respectful communication helped carry the interviewing process smoothly with each participant: I informed them about my research background, area of study, and mutual scope of expectation for the interview.
- Access to resources: On-reserve research was ultimately not a feasible possibility; such opportunities remained, unfortunately, at the mercy of a tight timeline and lack of research funding. However, the institutional liaisons I nurtured during my time as a researcher (e.g. with the Native Women's Association of Canada, or NWAC; and the Institute of Canadian and Aboriginal Studies at the University of Ottawa) were greatly beneficial to my work in their own right.

* * *

RESEARCH HYPOTHESIS

Historically, we have seen great discrepancies across civil society and the public sector, in demarcating direct and indirect roles; (fiduciary) responsibilities; and internationally mandated obligations of the State; regarding the conditions of Indigenous women and girls in Canada, and the nation-wide MMIWG crisis as a whole.

Although the more recent change in the political winds (with the election of Trudeau's Liberal government, following nearly a decade of Conservative rule) has bridged the gap to an extent, the crisis itself remains far from neutralized, and adequate justice has remained inaccessible for the affected demographic.

For this study, I assert that the relational tensions between and within Canadian institutions in and of themselves constitute a collective cause of the risks, violence and victimization perpetually faced by Indigenous women and girls across the country:

I examine how Canada's social, legal and political institutions in particular have behaved over the past few decades, and attempt to establish whether (as I suspect) it is the case that their hegemonic structures and operations play an 'invisible' yet significant role in furthering a systemic deprivation of rights of these Indigenous women and girls.

Pending a confirmation of my hypothesis, I hope to show that the institutional problem demands an institutional solution, and will subsequently proceed to identify specific gaps and outline potential recommendations in the interest of advancing safety and protection of Indigenous women and girls at risk specifically on account of their intersectionality.

* * *

INTRODUCTION

Justice has become an institutionalized creature. No longer concerned with the grandeur of its ideological³ origins, it tends to hover over the political handshake between profit and convenience. Having grown its appetite by feasting on public appraisal, it further preys upon unsuspecting victims of the system, and ominously circles outraged naysayers. For many, to seek the protective shadow of its wing is to undertake a gamble fraught with risk and peril. It is common enough to remain wary of the power and intent of this creature despite being drawn to the strangely charismatic sweep of its watchful eye. Having endured the terrifying reality of their female members' falling victim to the aggravated phenomenon of MMIWG (missing and murdered Indigenous women and girls), Canada's Indigenous communities grow impatient for a glimpse of this elusive creature in its true form.

* * *

What is wrong with this picture of justice today, and would it look like for Indigenous⁴ women of Canada to have appropriate and adequate justice for their missing and murdered?

Let us start by considering the numbers on the demographic in context. With 53 distinct Aboriginal⁵ nations across the country, there are five national Aboriginal organizations representing approximately one million Aboriginal people.⁶ The following table indicates the overall population statistics, disaggregated by sex:

³ Justice (from the Latin '*Justitia*'), as originally conceptualized to mean 'rightfulness' or 'lawfulness'.

⁴ The term 'Indigenous' is used throughout this paper to refer to the different groups of Aboriginal peoples.

⁵ The term 'Aboriginal' is constitutionally used to refer to [Canada's] first inhabitants – specifically, the people of First Nations, Métis and Inuit communities.

⁶ Statistics Canada, *Le quotidien*, 30 March 1993, p. 2.

Fig. 1. Aboriginal Identity Population Disaggregated by Sex [Canada, 2011]⁷

Aboriginal identity population by sex, Canada, 2011

Aboriginal identity	Females		Males		Females as % of the Aboriginal group
	number	percent	number	percent	
Total Aboriginal identity population	718,500	100.0	682,190	100.0	51.3
First Nations single identity	439,775	61.2	411,785	60.4	51.6
Registered or Treaty Indian	329,205	45.8	308,450	45.2	51.6
Not Registered or Treaty Indian	110,570	15.4	103,330	15.1	51.7
Métis single identity	228,465	31.8	223,335	32.7	50.6
Inuit single identity	29,950	4.2	29,495	4.3	50.4
Multiple Aboriginal identities	5,890	0.8	5,525	0.8	51.6
Aboriginal identities not included elsewhere	14,420	2.0	12,055	1.8	54.5

Note: 'Multiple Aboriginal identities' includes persons who reported being any two or all three of the following: First Nations (North American Indian), Métis or Inuk (Inuit). 'Aboriginal identities not included elsewhere' includes persons who did not report being First Nations (North American Indian), Métis or Inuk (Inuit) but who did report Registered or Treaty Indian status and/or membership in a First Nation/Indian band.

Source: Statistics Canada, National Household Survey, 2011.

Analysis of pertinent population growth trends strongly suggest that the number of Aboriginal women and girls will continue to rise⁸; in fact, the projected possibility is an increase in the overall female Aboriginal population to between 987,000 and 1,316,000 by 2036⁹. It is sufficiently reasonable to expect that, should a proportioned increase in resource allocation be feasible, it would be made available as required, by the State, for the purposes of advancing the rights and welfare of these women. However, the historical lack of political will to this effect has played a detrimental role dangerously impacting Indigenous women and girls:

Although Aboriginal women comprise only 4% of the entire female population of Canada, according to data released by the RCMP¹⁰, they are grossly overrepresented in the total number of homicides: Between 1980 and 2012 alone, 16% of all female homicides were

⁷ Source: National Household Survey, Statistics Canada, 2011.

⁸ *Projections of the Aboriginal Population and Households in Canada, 2011 to 2036* (Statistics Canada Catalogue no. 91-552-X).

⁹ Custom tabulation. Statistics Canada, Demography Division (*Projections of the Aboriginal Population and Household in Canada, 2011 to 2036*).

¹⁰ RCMP: Royal Canadian Mounted Police.

perpetrated against Aboriginal women.¹¹ More recently still, at the start of May 2014, the RCMP publicized data showing “nearly 1200 Aboriginal women had been murdered or gone missing in Canada¹² in the past thirty years; about 1000 murder victims, and approximately 186 disappearances”.¹³ While such statistics are in and of themselves unacceptable, it bears considering that various data collection challenges (to be further discussed in forthcoming chapters) render this information incomplete, meaning the count is inevitably higher than what organizational records show. While the barriers faced by Indigenous women in their struggle for justice are plenty in number, two of the most overarching of these are State negligence, which in this case, has ultimately amounted to State-sponsored violence; and systematic discrimination fuelled by post-colonial oppression and intergenerational trauma — discussed further below.

* * *

Let us start with the political and historical contexts to situate the problem of violence against Indigenous women and girls. Following unsuccessful attempts by the Mulroney government¹⁴ (and following administrations) to resolve the massive national deficit, the Paul Martin government¹⁵ endeavoured to slash debts by introducing a 2% growth cap on program spending. This limit created immense pressure on infrastructure of the “Indigenous archipelago,”¹⁶ with no funding being injected into much needed community development and welfare. The deterioration of these communities was further

¹¹ Arriagada, P. *Women in Canada: A Gender-based Statistical Report*. First Nations, Métis and Inuit Women. (Statistics Canada Catalogue no. 89-503-X). 23 February 2016.

¹² Alternate studies suggest other statistics; e.g. according to the organizers of Walk 4 Justice, an Indigenous non-profit organization co-founded in 2008 by G. Radek (Gitksan and Wet’suwet’en First Nations), there are more than 3000 missing or murdered women in Canada.

¹³ LeBlanc, D. “List of Missing, Killed Involves 1,200 Cases.” *Globe and Mail*. 2 May 2014: A10.

¹⁴ Canadian PM Martin Brian Mulroney (Progressive Conservative): Office held 1984 – 1993.

¹⁵ Canadian PM Brian Edgar Philippe Martin (Liberal): Office held 2003 – 2006.

¹⁶ As explained by Jorge Barrera, investigative journalist at APTN (Aboriginal People’s Television Network), in an exclusive interview in Ottawa, Canada, in June 2016.

exacerbated with the rise of the residential school¹⁷ crisis: An approximate total of 150,000 First Nations, Métis and Inuit children were removed from their communities and forced to attend these church-run, government-sponsored schools under a federal mandate of “aggressive assimilation”.¹⁸ In these institutions (80 of which were fully operational at the peak of the residential school system, in 1931; and the last of which was shut down only in 1996), Indigenous children were experimented on and abused, and relevant allegations maintain that federal documents from these times build a strong case for genocide.¹⁹

Unsurprisingly, many residential school attendees emerged from the experience abused or damaged on some level: For instance, it was found that “[l]egions of Aboriginal girls and boys [were] subjected to sexual abuse in residential schools in what amounts to state-sponsored sexual violence.”²⁰ However, many years passed before the gravity of the human-rights violations thereof came to light, and it took its toll on those victimized:

“The abuse was kept hidden. Untreated, it spread to epidemic proportions. Most cases of abuse could be traced to the residential school, from where victims often carried abuse back to their homes and communities.”²¹

For Canada’s Indigenous women, the era of residential schools was a pivotal point: “Their rights, status and identity were now fading into near obscurity. Once fiercely proud and independent, [Indigenous] women now struggled daily for survival, amid the turmoil of violence and abuse that had become a new reality.”²²

¹⁷ On reserves (lands reserved for people of certain Aboriginal identities), residential schools were modelled after Britain’s industrial schools, and are largely identified as a post-colonial cause of social devastation in Indigenous communities.

¹⁸ “A history of residential schools in Canada.” CBC News. Canada. 16 May 2008. Updated 21 March 2016.

¹⁹ *Ibid.*

²⁰ Johnson, H. and Dawson M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 93.

²¹ *Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality*. p. 125.

²² *Ibid*, p. 124.

The circle of violence continues to be perpetuated today as residential school survivors pass on their trauma to following generations. With limited funding to Indigenous organizations to help heal the problem, life in affected communities has grown to include violent behaviour as a norm, for both the women and the men. However, it is important to note that violence experienced by Indigenous women must be considered and analyzed in its own right, as it is experienced differently.

Grasping the violence differential in context preliminarily demands a scrutiny of the identity crisis that ravaged Indigenous groups following the colonial struggles — noting that up until the '60s, post-Confederation Canadian Aboriginal policy was “based on a model of assimilation”²³ with the Indian Act as the primary instrument. While Indigenous communities traditionally viewed their women as strong, valued and respected, with the introduction of colonialism came oppressive patriarchal structures that infiltrated their way of life, initiating a thoroughly destructive devaluation of Indigenous women’s roles in society:

“With the coming of European colonists, the long and systemic devolution of the Aboriginal women’s inherent rights, for equality and her unique status began. It eventually ended and undermined her valued position among her people. The Aboriginal women [sic] was denied any formed leadership role during the treaty-making process between the European and Aboriginal nations.”²⁴

Estrangement from the traditional ways (for instance, as a result of attending residential school; lack of incentive for continued interpersonal engagement with Indigenous languages and cultures; and/or other rapid changes in modern society) caused a lack of connectivity between children and their parents or grandparents, and ultimately, an

²³ Taylor, J. L. *Indigenous People: Government Policy*. Historica Canada. The Canadian Encyclopedia. Web. Updated 15 April 2016.

²⁴ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. *Changing the Landscape: Ending Violence – Achieving Equality*. p. 122.

intergenerational gap that further diminished the sense of belonging and value for Indigenous women. While the internal community relations in this respect began to languish, Indigenous women were and are often ostracized beyond the confines of their own lands and people; essentially, relegated to positions of ‘the Other’, in a dangerous sweep of homogenization. As they are caught at the nexus of constant racialization and sexualisation, these women are found to be continuously and categorically subjected to specific forms of violence that correlate directly to their exploited identity and gender.

Such violence is compounded in degree, with the unmitigated spread of the tragic MMIWG phenomenon; and normalized by the very institutions responsible for protecting Indigenous women from increased victimization and vulnerability. The nature of this institutional perpetuation of violence against Indigenous women is social in basis and legislative in structure, with lethal outcomes.

The attitudinal bias long admonished by Indigenous communities and their ombudspersons has flourished throughout an unconscionably long era of silence and wilful ignorance, having historically sparked a pattern and protocol of State negligence to prevent and protect against disproportionately high rates of death and disappearance of Indigenous females: The Conservative government, for instance, “steadfastly refused to call an inquiry [into the MMIWG situation] and stated that there [had] already been numerous reports documenting the issues [...] Although this is true in terms of numerous reports, there has been very little concrete action on any of the recommendations contained in those reports.”²⁵

Since the 2015 rise-to-power of the Trudeau administration, steps have been taken toward fulfilling the promise of carrying out the long overdue national inquiry into MMIWG.

²⁵ Kubik, W. and Bourassa, C. “The Politics, Policies, and Travesty of Missing and Murdered Women in Canada.” *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada*. Demeter Press. Bradford, Canada. 2016. p. 25.

However, it is no secret that Canada's constitutional reform as such has been a product of constitutional politics, rather than a direct result of judicial decisions or interpretation.²⁶ That is to say, although last year's election brought forth a political paradigm shift in federal impetus to act on the issue, the existing legal infrastructure remains insufficiently reflective of Indigenous women's needs, concerns, and rightful claims to safety and protection, as evidenced by the lack of pro-prosecution policies for MMIWG cases brought to court; and repeated bias against indigeneity, leading to victim-blaming for the same.

In this paper, I will assess the extent(s) to which persisting socio-legal barriers (that hinder Indigenous women and girls of Canada from availing themselves of the national justice system) are impacted or created by problematic institutional relations and processes, particularly in the contemporary MMIWG context. After examining and analyzing collected literature and data on the issue at hand, I will expose pertinent agents of change and driving factors, and identify problem areas that lack adequate prioritization at federal and local levels. Through my work, I maintain that justice is skewed and politicized, and aim to show how an institutional problem will warrant an institutional solution.

* * * * *

²⁶ Henderson. J. Y. [I.P.C.] *First Nations Jurisprudence and Aboriginal Rights – Defining the Just Society*. Native Law Centre, University of Saskatchewan. Houghton Boston Printers, Saskatoon. 2006. p. 5.

CHAPTER 1

Gendered Differentials in a Post-Colonial Society: Aggravated and Lethal Violence Against Indigenous Women

Adopted by the UN General Assembly in 1993, the UN Declaration on the Elimination of Violence Against Women outlines ‘violence against women’ as “an act that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion and arbitrary deprivation of liberty, whether occurring in public or private life.” A hermeneutical reading of this definition through a gender lens compels an emphasis on outcome: It is not only (/‘merely’) an intention, per se, to be violent toward women that constitutes a case of violence being experienced by women; rather, an action causing women to be exposed or likely to be exposed to violence, in and of itself constitutes violence (/‘a violent act’). Let us consider a couple of key elements with such an interpretation:

- (i) It is important to note that, in the given context, the conceptual boundaries of such an ‘action’ can extend to an ‘inaction’ as well – that is, a failure to act; and
- (ii) The causal link between the act and the experienced violence is crucial and irrefutable, and able to be discerned as such.

Adequately scoping violence against Indigenous women in particular requires the problem to be considered holistically, as a systemic and institutional one. As suggested by (i) above, inaction can be (just as) responsible for enabling gender-based violence (GBV). Perhaps more importantly, the greater the amount of power and political capital held by the perpetrator of said (in)action, the graver the ensuing potential of violence against groups that are as susceptible to it as Indigenous women are. The concept applies in a direct and lethal manner to State agents’ having demonstrated, throughout history, a

continuing negligence toward even acknowledging the problem as a system-wide one, resulting in a spike in deaths and disappearances.

Let us take a look at the prevalence of such violence as it targets and affects Indigenous women, and then consider the factors exacerbating vulnerabilities of their position in society. From a 'comparative' standpoint, Amnesty International has reported that “Indigenous women between the ages of twenty-five and forty-four with Indian status are five times more likely than other women of the same age to die from violence. [Moreover, according to] the Ontario Native Association of Canada, Indigenous [women] are six times more likely to be victimized than any other women in Canada.”²⁷ Beyond the probability factor, according to a study conducted by the Ontario Native Women's Association, “eight out of 10 Aboriginal women had personally experienced violence. Of those women, 87 percent had been injured physically and 57 percent had been sexually abused.”²⁸

The shock value of these statistics continues to be diluted even today by a vastly overlooked and insidious force: normalization. As unchecked GBV against Indigenous women becomes further normalized in and beyond their own communities, vulnerable and victimized women grow to substitute fear and anger for the most dangerous of all — resignation: growing used to and not being able to expect any relief from the terror and degradation of such circumstances. While acknowledgment of this as a national crisis is important, it is vital that such an acknowledgment does not remain constricted to the realm of political speeches or meaningless rhetoric, and is instead and immediately transferred to impactful action that will bring about ground-level changes for the demographics affected.

²⁷ Riel-Johns, J. “Understanding Violence Against Indigenous Women and Girls in Canada.” *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada*. Demeter Press. Bradford, Canada. 2016. p. 25.

²⁸ Statistics provided by the Ontario Native Women's Association.

As the majority of perpetrators of violence against Indigenous women are found to be men, it is imperative that relations between the sexes are considered of paramount importance when identifying problem areas on an attitudinal level. Following multilateral discussions in which impacted parties were invited to share their narratives, disturbing everyday truths reveal a persistent imposition of the view that Indigenous women are, in a way, 'dispensable,' or 'there for the taking': "During Panel consultations, Aboriginal women reported that in some communities Aboriginal men play a game called 'pass out,' in which young women who are 'passed out,' or unconscious from alcohol consumption, are gang-raped."²⁹ The playful nature with which such horrific acts are considered (by the men in question, in said communities) is testament to the deeply fractured sense of respect and responsibility in intimate or sexual relations within these communities, not to mention the severely imbalanced power structure fostering such environments.

It is remarked that "problems Aboriginal women encounter are remarkably similar. Aboriginal women living in remote communities experience additional difficulties because of geographical distance."³⁰ Deeper scrutiny into root causes indicates a deep-seated, multi-layered entanglement of driving forces of violent behaviour. Types of such forces include but are not limited to the following:

- Cyclical nature of domestic abuse;
- Deviation from traditional family structures;
- Substance abuse by children;
- Quality of foster home care; and
- Prevailing racist attitudes.³¹

²⁹ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 138.

³⁰ *Ibid*, p. 135.

³¹ *Ibid*.

Following the post-colonial upheaval of gender roles, the notion of masculinity was challenged across many Indigenous communities, and grew dangerously inextricable from violent and/or sexualized exertions of power, at the expense of Indigenous women.³² This skew in values has continued to manifest in various relationship contexts affecting Indigenous women in particular. Further to the point, given that a large portion of the violence occurring against Indigenous women happens in contexts related to domestic / partner relations, it is essential to study and assess pertinent 'situating' factors for such violence.

Let us start by establishing common categorical distinctions. There exist “distinct types of ['woman killing'] which researchers have tended to categorize into [two] broad categories — non-intimate partner homicide and intimate partner homicide — because the dynamics of each differ in important ways.”³³ The prevalence of MMIWG cases across Canada continue to “underscore the increased vulnerability of particular women to both intimate and non-intimate [partner] violence”.³⁴ For Indigenous women, their “loss of power and weakened status under the Indian Act”³⁵ often meant suffering abuse, and frequently “at the hands of those most trusted.”³⁶ It therefore bears noting the especial importance of examining root causes and trigger factors for perpetration of violence by persons ‘known’ to the victimized.

In 1998, Dawson and Gartner³⁷ publicized definitive lenses by means of which to further comprehend relevant trends of violent behaviour particularly in terms of intimate partner

³² Anthropological analyses suggest theories revolving around degradation of indigeneity (perpetuated by the colonists' superiority complex) as a coercive factor for Indigenous men seeking ways to reclaim self-assertions of power, including by being abusive toward women and in relationships.

³³ Russell, D. E. H. and Harmes, R. *Femicide in Global Perspective*. Teachers College Press. 2001.

³⁴ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 124.

³⁵ *Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality*. p. 125.

³⁶ *Ibid.*

³⁷ Research experts on intimate femicide [University of Toronto].

violence: One factor to consider is “relationship state” (i.e. “intact” vs. “estranged”), and the other is “relationship status” (i.e. legal marriage / common law / dating).³⁸ Types of intimate partner violence may be subsumed under the following categories:

- Coercive controlling violence;
- Situational couple violence (most common);
- Violent resistance; and
- Violence instigated by separation (less common).³⁹

Persons at especial risk of intimate partner violence have been found to be “[y]oung women, Aboriginal women, women who are living common-law or estranged from male partners, women experiencing poverty, and so on.”⁴⁰ Now, while “[i]t would be naïve to assume that all intimate partner killings of women are similar because they occur in the context of intimacy,”⁴¹ data-based conclusions show that “estrangement is strongly associated with risk of intimate partner femicide”.⁴² With estrangement in particular deemed an ‘instigating factor,’ two points come to light:

First, the sense of entitlement perpetrators develop toward the lives, dignity, privacy and safety of victimized Indigenous women is reaffirmed. These women are subjected to the kind of lethal brutality that extends far beyond the killing itself. In both life and death, they are dehumanized and cast aside by social and legal institutions that unconscionably fail them: When found and killed by an ex-partner, the victimized Indigenous woman becomes an object of sacrifice for the healing that has yet to occur in her surroundings. Even in death, justice eludes her; when the perpetrator, if caught, faces minimal charges

³⁸ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 150.

³⁹ *Ibid*, pp. 70-71.

⁴⁰ *Ibid*, p. 91.

⁴¹ *Ibid*, p. 150.

⁴² *Ibid*, p. 157.

(e.g. in spite of presented evidence indicating otherwise, diminishing the act from first-degree murder to manslaughter or a lesser offense) or even none at all, this renders her all the more ‘disposable’ in the public eye.

Second, risk assessment as such is, in and of itself, a risky business. Without the careful use of culturally sensitized problem evaluation methods, the systemic tendency toward blaming ‘risky lifestyles’ of the missing and murdered takes precedence over viewing indigeneity as a separate and distinct entity from the turmoil of its setting-circumstance in many cases. (Moreover, such a proclivity translates to bias on the level of national judicial mechanisms that have wilfully ignored the humanity of Indigenous women.) Substance abuse, for instance, “has been linked to sexual and physical violence, [but] it is no excuse for violence against Aboriginal women and children. Substance abuse should not be a consideration when laying criminal charges related to physical or sexual violence against women and children.”⁴³ It is prudent to note that Status Indians were not permitted to consume or purchase alcohol until 1954, but within 40 years of the ban’s being lifted, the impact on the Aboriginal community was far-reaching.⁴⁴

In conjunction to the havoc wreaked by substance abuse, the commonality of prostitution within certain Indigenous communities, although still lacking a hard statistical overview, has served as an added source of bias insofar as ‘lifestyle risk’ is considered by judicial officials; even though the fact that “prostitution is a reality for many Aboriginal women in large urban centres”⁴⁵ should not be misconstrued as an opportunity for victim blaming and shaming.

⁴³ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 157.

⁴⁴ *Ibid*, p. 125.

⁴⁵ *Ibid*, p. 137.

In parts of Western Canada, the specificities of such a problem were real and intense over the years; “[t]he women who were disappearing [from Vancouver’s Lower Eastside from the early 1980s until 2002] were all known sex workers who had issues with heavy drug use”.⁴⁶ Following the notorious Pickton murders of women from Vancouver’s Eastside, it became devastatingly clear that ‘ill repute’ and/or social stigma was foisted upon the image of the victimized Indigenous woman. Investigations revealed the horrific nature of the attacks: “Pickton had disposed of his victims by feeding their remains to his pigs [...] However, although the pigs ingested the flesh and crushed the bones of the victims, they also left behind bone fragments that were used to establish the identity of victims by matching DNA to established records or to their family members.”⁴⁷ Nonetheless, it was only following Pickton’s arrest and Amnesty International’s release of a study⁴⁸ on violence against Indigenous women that the victims became ‘visible’.⁴⁹

Canada’s most notorious sex murderer was ignored by the police for more than three years because they refused to believe that the perpetrator of the disappearances was a serial killer in the Downtown Eastside.⁵⁰ This fact speaks directly to the long-term, institution-wide unwillingness to classify MMIWG as a systemic issue, choosing instead to view it as a series of disconnected and isolated incidents of violence against Indigenous women. The outcome of such a choice has been inevitable:

⁴⁶ Rossmo, D. Kim. “Criminal Investigative Failures in the Missing Women/Pig Farm Serial Murder Case.” Greenbelt, MD: The Academy of Criminal Justice Sciences. 2011. Print.

⁴⁷ O’Reilly, P. and Fleming, T. “Only The Silence Remains: Aboriginal Women as Victims in the Case of the Lower Eastside (Pickton) Murders, Investigative Flaws, and the Aftermath of Violence in Vancouver.” *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada*. Demeter Press. Bradford, Canada. 2016. p. 50.

⁴⁸ *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada* [Amnesty International].

⁴⁹ Culhane, D. (2003). “Their Spirits Live Within Us: Aboriginal Women in Downtown Eastside Vancouver Emerging Into Visibility.” *The American Indian Quarterly* 27.3 2003.

⁵⁰ Rossmo, D. Kim. *Criminal Investigative Failures*. Boca Raton: CRC Press, 2009. Print.

The nature of the occurring femicide as such has been wilfully dismissed, and the devaluation of the victimized Indigenous woman persisted. Now, to return to (i) and (ii) as outlined previously, it bears noting that the State's decades-long failure to act, with regard to imposing checks and corrections on judicial and other institutional negligence and bias (for MMIWG and other cases of violence), has effectively enabled a perpetuated subjugation of Indigenous women to various subcultures of violence within a crumbling infrastructure of gendered relations.

* * *

CHAPTER 2

Levels of Discrimination: A Crisis of Inequalities

After the class system was introduced, separating Indigenous peoples and “[creating] a new social order that would eventually divide nations, clans and families,”⁵¹ an internal-external tension in societal values cast a far-reaching shadow of discrimination far more complex in reality than it has generally been acknowledged to be. As economic disparity ravaged several of the Indigenous communities nation-wide, “[s]ocial conditions worsened with the introduction of the welfare system [and] traditional systems of family and communal support crumbled, [ultimately being] replaced by a growing dependency on ‘relief.’ Many Aboriginal families became second-, third-, or –fourth-generation welfare families.”⁵² With the ensuing pressures of intercultural marginalization and classist oppression bearing down actively upon the Indigenous communities affected, supplemented with the lack of political will to inject funds into community development / healing, the gradual decline into increased rates of violence and crime came as no surprise.

Despite high-level assurance of integration pathways, once again, it can be seen that the institutional frameworks at play have only sharpened the beak of a cruel and unforgiving justice system. The “complex and intersectional discrimination”⁵³ impacting Indigenous women remains largely ignored across the social, legal and political contexts within which it occurs. At the advent of second-wave feminism, “white, middle-class representations of [the] movement were challenged by Aboriginal women, women of colour, minority

⁵¹ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 123.

⁵² *Ibid*, p. 124.

⁵³ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice For Indigenous Women and Girls. Canadian Human Rights Commission. p. 34.

women, and women in the developing world for universalizing the experience of women and for presuming to speak for all women.”⁵⁴

By being caught in a world where even the advancement of women’s rights failed to escape the iron grip of colonial attitudes, Indigenous women and their indigeneity have, throughout history, been altogether excluded from the dialogue. The systemic deterioration of their status and the unreliability of their representation derives from a flamboyant disregard for their intersectionality. An ongoing disparagement of social and economic circumstance compounded with the existential crisis of a stolen identity have eked out a bleak scope for Indigenous women’s growth and development. To frame this reality in the context of the penal system, it is noted that an Indigenous woman is more likely to go to prison than to graduate from university.⁵⁵ Despite the fact that Indigenous women make up only around 4 percent of the population of Canadian women overall, 15 percent of federally sentenced women are Aboriginal.⁵⁶

This statistic is strongly indicative of the repeatedly expressed sentiment, echoed by voices of representative organizations, that Indigenous women are grossly underrepresented yet thoroughly overpoliced. Studies have shown that “negative outcomes are compounded for overly criminalized populations such as Aboriginal people”.⁵⁷ It was further found that “[o]f the federally sentenced Aboriginal women interviewed by the Task Force on Federally Sentenced Women, 51 percent indicated that they had been sexually abused; [and] 90 percent reported [having been] physically abused.”⁵⁸ Combatting the rampant spread of such abuse as fostered by discrimination

⁵⁴ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 27.

⁵⁵ *Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality*. p. 139.

⁵⁶ P. Mayhew, Association canadienne des Sociétés Elizabeth Fry, entrevue téléphoniques. 10 mai 1993.

⁵⁷ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 164.

⁵⁸ As expressed in *Solliciteur general du Canada*.

and intolerance will necessarily involve a proactive multilateral commitment by engaged State and non-State actors to identify areas of justice reform that require tailored cultural sensitivity. A simple and symbolic step toward initiating a sensitized approach would be to correct the problem of inadequate representational advocacy by ensuring inclusivity in pertinent sectors, as suggested here: “[There should be] some Aboriginals [in the criminal justice system.] When I walk into the courtroom [...] you can just feel the prejudice. It’s just like they’re looking at you and saying, ‘Well, another Indian woman got beaten up.’”⁵⁹

State negligence in this regard amounts to a systemic dismissal of relevant recommendations and an obstinate refusal to act upon research-backed acknowledgment of situational nuances: Women who are mentally challenged (with schizophrenia, for example) “are labelled as having ‘behavioural issues’ and left on the street...the person’s behavior is not taken seriously by mainstream social service providers.”⁶⁰ It is evidenced that there exists no mental health or trauma management support through justice system.⁶¹ The concept of ‘not taking it seriously’ (in the expressed context) demonstrates the recurring theme of the ‘disposability’ of persons who fall outside of the ‘acceptable’ rungs of the social ladder: The services are ultimately not provided because those who would stand to benefit from them are not deemed, by the would-be issuing institutions, to be ‘worthy’ of the required resources. Even Canada’s legal infrastructure, to be further discussed in forthcoming chapters, displays a similar and oppressive dominance structure upon Indigenous women: While it may be the case that, *prima facie*, Bill C-31⁶² seemed to have eliminated (tolerance for) discrimination against Indigenous women, it ultimately

⁵⁹ McGillivray and Comaskey. *Black Eyes All Of The Time: Intimate Violence, Aboriginal Women, and the Justice System*. University of Toronto Press, Scholarly Publishing Division. 27 November 1999. p. 126.

⁶⁰ *Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls*. Canadian Human Rights Commission. p. 19.

⁶¹ *Ibid.*

⁶² Purposed to align the Indian Act with the Canadian Charter of Rights and Freedoms through significant amendments made to the Act on June 28, 1985.

served to construct a “new social order among Aboriginal peoples which continues to have far-reaching impact on the lives of those reinstated under the legislation.”⁶³

As such underlying attitudinal biases and lack of services continue to hinder Indigenous women from breaking through the barriers of shame, ‘otherness,’ and exclusion that shackle them to lives of abuse, it becomes increasingly clear that it is yet again the idea of blaming ‘common Indigenous lifestyle’ for severity of risk; and using that as a weapon of blame; that takes precedence over the owed protection of Indigenous women’s rights to live freely of discrimination, be given a fair trial, and to have their circumstances considered in a humanitarian and compassionate way.

Political space needs to be made for Indigenous women to challenge institutional discriminations by being their own advocates and engaging in social self-assertion; particularly given that “the normative status of women in a society appears to condition the association between gender equality and lethal victimization”.⁶⁴ For gender equality to be nurtured in both concept and implementation, it is imperative to establish adequate representation of Indigenous women at all levels, with deliberate and visible interorganizational support to that effect. Satisfaction of relevant recommendations would involve, for instance, consulting with representatives of women from each Indigenous group affected by (e.g. policy) issues. At present, the problem of externally imposed ‘homogenization’ of a inaccurately constructed identity of ‘the Indigenous woman’ remains a barrier to inclusion of certain groups: it is noted, for instance that Inuit women are not formally consulted by the federal government on public policy matters that impact them specifically as Inuit women.

⁶³ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 126.

⁶⁴ Johnson, H. and Dawsom M., Violence Against Women in Canada: Research and Policy Perspectives. Oxford University Press. 2011. p. 148.

Such persisting hindrances to inclusion only serve to complicate the national struggle for reconstructing the intersectional sex differential in a positive light. On August 20, 1992, the Federal Court of Appeal unanimously ruled that consulting primarily men for the development of Aboriginal policies affecting all Aboriginal peoples constituted a violation of freedom of expression.⁶⁵ Without accounting for specificities of the different groups of Indigenous women and their personal expressions and experiences of being discriminated against, neither judicial enforcement nor (colonial) feminist politics will provide an effective solution to the reduction of crime, violence or abuse across Indigenous communities.

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⁶⁵ T. Nahanee. Dancing with a Gorilla, Aboriginal Woman, Justice and the Charter, document présenté à la Commission royale sur les peuples autochtones, novembre 1992, Ottawa, pp. 4-5.

CHAPTER 3

Grasping at Laws: Indigenous Women as Gambits in Canada's Legal Infrastructure

Compounding the sociopolitical victimization faced by Canada's Indigenous women is the legal infrastructure governing them, which has itself become a re-victimizing process. Let us consider the depth of its impact on the gender differential in context. Historically, we have seen that in 1876, the Indian Act abolished the rights, status and identity of Aboriginal women; and was intended to be an instrument to facilitate a state in which there remained "not a single Indian in Canada that [had] not been absorbed into the body politic, and there is no Indian question and no Indian department."⁶⁶ It is clear that over several decades, there has persisted a 'double discrimination,' across national legislature and beyond, against Indigenous women, based on the fact of their sex and that of their indigeneity.

We may note, for instance, that the Indian Act has dictated that an Indigenous woman's children can be apprehended, and her rights to family property, denied.⁶⁷ (Considering the historical importance of intergenerational relations in context, the interdependency of human rights must be taken into account, from a holistic community development perspective; for instance, the protection of an Indigenous mother's rights will further the protection of her children's rights.⁶⁸)

It must be further noted that denial of rights was intrinsically linked to marital status (in particular, the legislatively coerced forfeit of 'official Indian status' upon an Indigenous woman's marriage to a 'non-Indian' man), it can be seen that the value of her position in

⁶⁶ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 123

⁶⁷ *Ibid*, p. 146.

⁶⁸ A Human Rights Violation Requires a Human Rights-Based Inquiry: Submission by the Canadian Human Rights Commission to the Government of Canada Pre-Inquiry Design Process. Canadian Human Rights Commission. p. 2.

post-colonial society has been attributed largely in a relational manner; that is to say, with relation to either Indigenous or non-Indigenous men, rather than in its own right.

While Section 35(1) of the Constitution Act (1982) recognized and affirmed the “existing aboriginal and treaty rights of the aboriginal peoples of Canada,” and “remedied the political denial of [for example] First Nations traditional law, [it has nonetheless failed to alter] the legislative power structure of Canadian federalism.”⁶⁹ Case law specifically informs us that is legally permissible for the Canadian government to “justify infringements of [S]ection 35(1) rights if the Crown’s actions are honourable and in accordance with valid objectives”.⁷⁰ However, in the interest of guarding against ‘arbitrary government action’ that might incur adverse effects on the demographic at hand, the Supreme Court of Canada insisted upon what may be interpreted as some remnant of ‘non-derogability’ for the spirit of the provision: Section 35(1) still “gives a measure of control over government conduct and a strong check on legislative power.”⁷¹ Moreover, if this constitutional provision is able to be fully and adequately availed by Indigenous communities, it would become all the more reasonable for Section 35(4) (in which Indigenous rights are “guaranteed equally to both male and female persons”) to grow its practical applicability and help shape a better gold-standard for the prevention of violence against Indigenous women.⁷²

From a more ‘overarching’ perspective, in conformity with instruments of international humanitarian law, the call to “[mainstream] a gender perspective in all policies and programmes”⁷³ has demanded a response from engaged State actors. Bearing in mind the established rights of Indigenous women as outlined in Articles 18 and 19 of the UN

⁶⁹ Henderson, J. Y. [I.P.C.] *First Nations Jurisprudence and Aboriginal Rights – Defining the Just Society*. Native Law Centre, University of Saskatchewan. Houghton Boston Printers, Saskatoon. 2006. p. x.

⁷⁰ *R v Sparrow*, [1997] 1 SCR 1075, supra note 45 at para 64.

⁷¹ *R v Sparrow*, [1997] 1 SCR 1075, supra note 45 at para 65.

⁷² Borrows, J. “Aboriginal and Treaty Rights and Violence Against Women.” *Osgoode Law Journal*. Article 9, Vol. 50, Issue 3. 2013.

⁷³ Beijing Platform for Action, UN Women Conference 1995, paragraphs 202 & 292.

Declaration on the Rights of Indigenous Peoples, it is further noted that “[t]he realization of economic, social, political and cultural rights is necessary to enable Indigenous women and girls to escape violence.”⁷⁴

It is tragically common, however, for such violence not even to be recognized as such by the very persons being victimized: “[M]any Aboriginal women carry hardships that have been internalized to the point that women do not recognize them as human rights abuses. These abuses have become accepted as ‘the way things are.’”⁷⁵ Restoration of an appropriate, violence-free standard of normality for these women will require a targeted strategy promoting human-rights education, information sharing on healthy relationships, and other relevant factors across Indigenous communities and beyond; particularly given that “[t]here is a profound lack of information in many Aboriginal communities regarding women’s human and legal rights, family violence and existing services within and outside their community.”⁷⁶

One of the greatest challenges to manifesting such visions of violence prevention is the preconditioning of legal institutions to support enshrinement of enforcing mechanisms, both nationally and internationally. Although the United Nations (UN) mandated the creation of “necessary mechanisms to monitor the indigenous people’s situation especially those facing the threat of extinction and human rights violations and to stop these ethnocidal and genocidal practices,”⁷⁷ several relevant instruments spawned by UN bodies drew criticism over the years.

⁷⁴ CEDAW Committee, Report of the Inquiry concerning Canada, 6 March 2015, at paras. 203 and 210.

⁷⁵ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice For Indigenous Women and Girls. Canadian Human Rights Commission. p. 32.

⁷⁶ As expressed in *ARA Consultants*.

⁷⁷ Jacquette, Jane S. [*contr.*] Women and Gender Equity in Development Theory and Practice: Institutions, Resources and Mobilization. Women, Gender Studies, and the International Indigenous Movement. Durham, N.C. Duke University Press. 2006. pp. 323-24.

For example, the official UN document issued following the Fourth International Conference on Women was remarked to have an “overemphasis on gender discrimination and gender equality [depoliticizing] the issues confronting [Indigenous persons].”⁷⁸ As per Article 36 of the Beijing Declaration, which states that “[I]ndigenous customary laws and justice systems which are supportive of women victims of violence [must] be recognized and reinforced [and that] [I]ndigenous laws, customs, and traditions which are discriminatory to women [must] be eradicated,” progression of case-law outcomes has shown a push in the right direction:

Following Sandra Lovelace’s successful case⁷⁹ against sex discrimination in the Indian Act — during the defense of which Lovelace claimed violations of Articles 2(1), 3, 23(1) and (4), 26 and 27 of the ICCPR⁸⁰ — the ‘marrying out’ clause was removed from the Act in 1984. This step was echoed in sentiment by the 1985 passing-into-effect of Bill C-31, which was designed with the “explicit objective of bringing [the Act] into line with the equality provision of the Charter of Rights and Freedoms”⁸¹ — and under the pressure of which the Status population had, by 1990, increased by 115,000.”⁸²

While it is true that the ramifications of this particular population increase might appear, to some extent, to have been offset by the fact that the majority of State-issued government funding has gone to the Status population, on account of their official recognition by the government, this narrow lens for fund allocation has, not only been insufficient, but also “disadvantageous to all other Aboriginal people.”⁸³ More to the point, the funds that have

⁷⁸ Jacquette, Jane S. [*contr.*] *Women and Gender Equity in Development Theory and Practice: Institutions, Resources and Mobilization. Women, Gender Studies, and the International Indigenous Movement.* Durham, N.C. Duke University Press. 2006. p. 310.

⁷⁹ *Sandra Lovelace v. Canada* (1981).

⁸⁰ ICCPR: International Covenant on Civil and Political Rights.

⁸¹ As cited in *Province du Manitoba*.

⁸² *Chambre des communes, Procès-verbaux et témoignages du Comité permanent des affaires autochtones, fascicule 12, p 12:8.*

⁸³ *Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality.* p. 144.

in the past been allotted to the different (federally recognized) Indigenous groups across Canada have hardly been sufficient: “Forty-six Native communities [were] expected to share \$25,000 for family violence. [That’s] 46 communities that speak 25 different languages.”⁸⁴

Despite this monetary insufficiency, there persisted “a false perception [that] women and their children who were reinstated under Bill C-31 receive preferential treatments in the allocation of band resources”⁸⁵ — reaffirming how ‘the Indigenous woman’ is societally constructed as an object of sacrifice, of scapegoatism, for the disparaged conditions faced by her community and beyond. Regardless of whether or not she manages to avail herself of provided resources so as to defend her position in society, she has continued to be viewed as a figure of blame, unworthy and disposable, ever at the mercy of a self-aggrandizing political climate that has historically diminished her standing, at her peril.

Over the years, Canada has seen “major shifts in policy, funding, and services for victims of intimate partner violence and sexual violence. [...] Since the early 1980s, police officers across the country have followed pro-charging policies to remedy the traditional reluctance of police to take action against intimate partners.”⁸⁶

An obstinate roadblock embedded in key legislature is that “[i]ntimate partner violence is not a specific offence in the Canadian Criminal Code; [and] as a result, the UCR⁸⁷ survey cannot be used to examine trends in the crimes that are reported to the police.”⁸⁸ Failing to legislatively acknowledge the specificities of this type of violence most profoundly

⁸⁴ *Ibid*, p. 145.

⁸⁵ *Ibid*, p. 125.

⁸⁶ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 1.

⁸⁷ UCR: Uniform Crime Reporting (Survey).

⁸⁸ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 57.

impacting Canadian and Indigenous women results in a lack of effective legislative solutions, particularly in context of prosecutions for MMIWG and other relevant cases.

With pro-charging policies arguably having had the most significant impact on altering societal response to intimate partner and domestic within the criminal justice realm,⁸⁹ there are several factors to consider even beyond attitudinal bias in (e.g.) policing institutions regarding why decisive judgments to prosecute are not ultimately taken. Apart from investigative challenges (to be further discussed in forthcoming chapters), there exist as well several methodological challenges “inherent [to research examining the relationships between legislative and policy impacts and rates of lethal violence], including the difficulty of assessing temporal order, the ability to control for all potentially relevant factors, and the pitfalls of basing inferences about individual behaviour on aggregate data.”⁹⁰

For Indigenous women across the country, with especial consideration to the fact that often the perpetrator of violence and abuse is a member of their family or community, fear of retaliation following court proceedings (or even case reporting) remains a complex and real issue. Types of retaliation span “name-calling, victim-blaming and lateral violence”⁹¹ and more, serving to further intimidate affected Indigenous women into a prolonged state of vulnerability.

As there continues to exist a “strong perception that service providers will be ‘punished’ if they challenge the federal government,”⁹² the prevalence of support systems in social and judicial infrastructure remains problematically unreliable. Undercutting this culture of retaliation has to begin within the national legal framework, in an enforcement-oriented

⁸⁹ *Ibid*, p. 162.

⁹⁰ *Ibid*, p. 179.

⁹¹ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice For Indigenous Women and Girls. Canadian Human Rights Commission. p. 21.

⁹² *Ibid*.

approach. The Access to Information Act and Privacy Act, for instance, can be actively purposed to protect complainants from federal reprisal; the laws enable the person to access all the records they would need in the event of retaliation.⁹³ In supplement, education and awareness raising on the unlawfulness of retaliation must be prioritized across Indigenous communities.

Overall, in criticism of the national public policy lens, Canada has been said to “[lag] behind other countries that have developed a comprehensive approach to addressing all forms of violence against women as a gender equality issue.”⁹⁴ When it remains the case that Indigenous women often feel like it is futile to try and change their circumstances due to lack of power, it falls to responsible agents of the State as well as engaged civil society representatives to issue a call to proliferate these women’s human rights legislatively, and actively promote their protection.

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⁹³ *Ibid.*

⁹⁴ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 189.

CHAPTER 4

Design and Reach of the 2016 National MMIWG Inquiry: Assessing Process and Impact

Based on the Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violations, an effective nation-wide public inquiry requires an “active, engaged civil society that will collaborate in the work of the inquiry, contribute to its hearings and other processes, and support and advocate for its recommendations.” It has been stressed that the subject of the inquiry “should be selected with a view to the possibilities for human rights education through the public nature of the national inquiry methodology.”⁹⁵

Failure to include a human-rights framework into the inquiry mandate would be detrimental to its purpose as “a means of acknowledging and addressing Canada’s failures to implement the full range of the human rights of Indigenous women, including their civil, political, economic, social and cultural rights, and moving towards fulfillment of them.”⁹⁶ Moreover, recommendations in process should be evidence-backed, address the inquiry’s terms of reference, and provide an adequate response to the gravity of the situation, while being “measured against the requirements of international, domestic, and local human rights law.”⁹⁷

Following the 2015 election of the Trudeau administration, the pre-inquiry process into the MMIWG issue was launched with the following steps: identifying, consulting and engaging stakeholders; appointing inquiry commissioners; gathering resources; finalizing

⁹⁵ A Workbook - Addressing the Crisis of Missing and Murdered Aboriginal Women and Girls: A National Public Inquiry. National Forum on Community Safety and Ending Violence. Native Women’s Association of Canada. 2012. p. 4.

⁹⁶ The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 5.

⁹⁷ Framing a National Public Inquiry Workbook. Native Women’s Association of Canada. 2015. p. 10.

the inquiry plan; acquiring information and evidence; carrying out public hearings; developing recommendations; releasing the prepared report; and conducting a follow-up and evaluation.⁹⁸ As one of the important multilateral discussions on the topic, the NWAC PTMA⁹⁹ consultation of March 2016 served to collect opinions on the MMIWG inquiry.¹⁰⁰ Noting the importance of geographic separation and specificities of different Indigenous communities, it was urged that “standing determinations would be region-specific, taking into account the wishes and circumstances of the various regions”.¹⁰¹

According to the consultation reports, the national inquiry would need to involve federal, provincial and territorial governments;¹⁰² were the inquiry to be only federal in scope, policing in many jurisdictions would fall outside the authority of the inquiry and the goals of the inquiry would be unachievable.¹⁰³ With appropriation standards for resource allocation across the different levels of government remaining a matter of high-level contention, effective distribution of funds continues to be largely at the mercy of a seemingly capricious political will. It was suggested by a number of PTMAs in attendance that core funding be provided to themselves as well as to NWAC, so as to facilitate their “[playing] a major role in the Inquiry by, for example, attending each hearing and following the process of the Inquiry throughout, as well as giving advice to the Inquiry.”¹⁰⁴ Surprisingly, the reports failed to make any kind of recommendations regarding provision of any funding by the [inquiry] to police institutions.¹⁰⁵ This type of

⁹⁸ *Ibid*, p. 4.

⁹⁹ PTMA: Provincial and Territorial Member Association.

¹⁰⁰ NWAC Pre-Inquiry Report: Consultation with NWAC Regions. Native Women’s Association of Canada. 2016. p. 1.

¹⁰¹ *Ibid*, p. 2.

¹⁰² *Ibid*, p. 3.

¹⁰³ The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 7.

¹⁰⁴ NWAC Pre-Inquiry Report: Consultation with NWAC Regions. Native Women’s Association of Canada. 2016. p. 2.

¹⁰⁵ *Ibid*.

failure should be construed as a problem in its own right — insufficient specificity of recommendations. Recommendations made in relatively archaic terms, with ideological language divorced from practical suggestions, beget a similar nature in recommendation response and follow-up. Simply put, for organizational recommendations to be effective, they must incorporate a language of enforcement and urgency that is supplemented by specific details suggesting practical advancements or (other) concrete improvements. Without the development of such a paradigm, any human-rights model referenced in the MMIWG context will waste away within the confines of institutional dialogue, and fail to serve its purpose of elevating Indigenous women from conditions of fear, violence, abuse and crime.

As Indigenous organizations across the country continue to push for the MMIWG issue to be acknowledged as systemic not only in policy but also in process, it has been proclaimed imperative that the inquiry diligently review failures of existing oversight mechanisms, and that completely new mechanisms for police accountability are considered. The importance of scrutinizing the conduct of all governments regarding interjurisdictional issues has been noted,¹⁰⁶ and it is clear that establishing clear roles and responsibilities for the various State organs in play (particularly policing bodies) is vital to the inquiry's success, as is providing streamlined methods for reparation of social tensions inhibiting justice.

During the PTMAs' discussion, the ramifications of granting amnesty to persons for misconduct were considered, before the idea was quashed: It was noted that were the misconduct never to be addressed, that same misconduct would continue to persist. The unacceptability stems from the lack of accountability that would likely follow from carrying out such an approach. The difficulty is reconciling this thought with the asserted

¹⁰⁶ *Ibid*, p. 3.

“need to create safe space at the Inquiry”¹⁰⁷, perhaps most importantly in the context of information gathering and trust building between the different social and judicial institutions.

Facing continued pressure from civil society to facilitate this trust building process and to acquiesce to the demands of Indigenous communities as set forth in context of the inquiry, the Trudeau government would be hardpressed not to include “[o]rganizations, regional and local groups, and families and communities who have experienced extreme violence leading to an Aboriginal woman or girl going missing or being murdered.”¹⁰⁸ Yet, it is evident that overall, inadequate representational advocacy for different women’s groups remains a point of criticism.

For instance, although it was stressed that “[f]ederal, provincial and territorial governments, NWAC and Pauktuutit¹⁰⁹ must be involved”¹¹⁰ in the process of selecting the commissioner(s) for the inquiry, it was nevertheless made clear at this month’s¹¹¹ federal announcement of the inquiry launch that the call for Inuit inclusion had fallen on deaf ears, given that none of the five appointed inquiry commissioners were Inuk. Canada’s Indigenous women currently anticipate a federal response to the push for a Inuk commissioner to be added as a sixth member to the team, so as to correct the lack of inclusivity in previous years.

Gaping holes in past administration of justice has spawned the need for this inquiry to “design and establish an independent mechanism for the review of individual cases where family or community members believe an investigation or conclusion was faulty.”¹¹² Let

¹⁰⁷ *Ibid*, p. 16.

¹⁰⁸ Framing a National Public Inquiry Workbook. Native Women’s Association of Canada. 2015. p. 10.

¹⁰⁹ Pauktuutit Inuit Women of Canada.

¹¹⁰ NWAC Pre-Inquiry Report: Consultation with NWAC Regions. Native Women’s Association of Canada. p. 11.

¹¹¹ August 2016 (Ottawa, Canada).

¹¹² The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations

us consider an existing frame of reference: Conducted under the Public Inquiry Act, the past Missing Women Commission of Inquiry led by Oppal¹¹³ left several lessons to be learned. For instance, it is noted there was a prevailing number of conflicts of interest (e.g. with the Commissioner himself having suggested the inquiry would not be useful and nonetheless being appointed to lead it); and a lack of a required independence in accountability review (e.g. the Peel Regional Police Department, although being reviewed itself by the RCMP¹¹⁴ for corruption among working officials, was the operating body that prepared the ‘independent’ expert report assessing RCMP conduct).¹¹⁵

Moreover, the exceedingly poor translation of recommendations to action speaks for itself: Although safe transportation to replace the infamous Highway 16 (known as the “Highway of Tears”, where several Indigenous women and girls have been known to be murdered or disappeared), was one of Oppal’s 63 issued recommendations, even years later, the lack of political will seemed an insurmountable obstacle, and residents of the area have continued to suffer for lack of safe transit options¹¹⁶.

It is crucial that this time around, the inquiry has the political support it needs to succeed to the satisfaction of the families of Canada’s missing and murdered. Unfortunately, this inquiry’s procedures responsible for ensuring inclusion and accountability leave much to be desired, as noted in the recent remarks¹¹⁷ put forth by the President of NWAC, Dr Dawn Harvard: (Inter alia) the terms made no explicit mention of the role of the justice system or police investigations, and did not reaffirm provision of opportunities to families

from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 7.

¹¹³ The Honorable Wally Oppal, former Attorney General of British Columbia, and Commissioner of inquiry.

¹¹⁴ RCMP: Royal Canadian Mounted Police.

¹¹⁵ Bennett, D. et al. Blueprint for an Inquiry: Learning from the Failures of the Missing Women Commission of Inquiry. P. 11. B.C. Civil Liberties Association. West Coast Women’s Legal Education and Action Fund. Pivot Legal Society. 2012.

¹¹⁶ “Highway of Tears still doesn’t have proper transit, says mayor of Smithers.” CBC News. 7 October 2015.

¹¹⁷ Aboriginal People’s Television Network (APTN) live broadcast, 3 August 2016.

who want prematurely closed cases to be reopened. The public dissatisfaction with the leaked draft terms of reference for the inquiry has been echoed beyond the federal announcement, and given the seeming lack of regard toward implementing real change across engaged institutions, history stands to repeat itself, with the lives of Indigenous women and girls remaining staked in the political odds.

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CHAPTER 5

Devolved Power Structures: Roles, Obligations and Pressures

The CEDAW Committee found that Canada has violated Article 3 of CEDAW by way of insufficient coordination among the various jurisdictional State powers, which has led to an increased exposure for Indigenous women to gaps in both social and judicial protection.¹¹⁸ A persisting lack of clarity on delegation of responsibility across State organs stems from a tendency to shift obligation within an institutional framework that values convenience over effectiveness. Despite being morally and legally bound to represent the interests of all Aboriginal peoples, the federal government has spent the past 20 years or so deferring a large part of its fiscal responsibility thereof to provincial authorities;¹¹⁹ and “for Aboriginal women, particularly Métis, non-Status [Indians] and those living in urban areas, there is jurisdictional confusion over who is responsible for funding Aboriginal women’s programs and services.”¹²⁰ Contributing further to this confusion is the “recent ‘down-sizing and devolution process’ by the Department of Indian Affairs and Northern Development and the development of tribal council affiliations to administer programs and services to Aboriginal communities.”¹²¹

The internal-external strain between post-colonial Canadian and Indigenous power structures has been moulded by an ongoing struggle for control over resources, and by cross-imposed social constructs of identity. Although for many years, several “local political structures comprise[d] male chiefs and councils [...], [with] local by-laws [having] to be approved by the federal government,”¹²² today, it is the case that many

¹¹⁸ The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 14.

¹¹⁹ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 144.

¹²⁰ *Ibid*, p. 145.

¹²¹ *Ibid*, p. 144.

¹²² *Ibid*, p. 123

Indigenous communities are effectively run by female Indigenous activists, with local women as the primary ombudspersons demanding government consultation with their groups. Yet, it remains a fact that the jurisdictional dubiety borne of inadequate constitutional entrenchments in national legislation victimizes these women despite the push for empowerment:

“There was a sense that many Aboriginal women are caught between federal and provincial or territorial jurisdictions, particularly if the discrimination occurred on reserve [...] Some women shared stories of never having had their complaint dealt with because they ran out of time in one jurisdiction, while waiting for the other jurisdiction to decide whether they would deal with the complaint.”¹²³

Proliferating the legal foundations for an enforceable human-rights framework tailored to the intersectionality of Indigenous women is key. In identifying and assessing barriers to Indigenous women’s access to justice, the Canadian Human Rights Commission (CHRC) outlined a number of recommendations in this vein, one of the most specific being the suggestion to “expand Jordan’s Principle¹²⁴ so that it formally covers all potential services, not just health care.”¹²⁵ The concept of streamlining the right to protection across national judicial instruments goes hand-in-hand with social and institutional echoes of the same: As remarked during a dialogue¹²⁶ with Chief Commissioner of the CHRC, Marie-Claude Landry, bringing together a coalition of voices with the same message (regarding the importance of human rights protection) is vital to making sustainable progress with interorganizational relations, which impact the

¹²³ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice For Indigenous Women and Girls. Canadian Human Rights Commission. p. 30.

¹²⁴ As outlined in the CHRC report: Jordan’s Principle calls on the government of first contact to pay for health care services and seek reimbursement from other jurisdictions later, so children do not get caught in the middle of government technicalities. Further to the point, this concept may in context be applied expansively to Indigenous women and girls, with regard to the carrying out of timely and necessary MMIWG investigations by jurisdictional powers best equipped to do so.

¹²⁵ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice For Indigenous Women and Girls. Canadian Human Rights Commission. P. 31.

¹²⁶ Meeting held in June 2016, in Ottawa, Canada, at the CHRC office.

quality of the complaint process and ground-level improvements for Indigenous women experiencing vulnerability, victimization and other forms of violence. Devolving power structures within Aboriginal Canada and beyond must be realigned with the interest of demolishing the existing crisis of inequality marginalizing women and girls, and be meaningfully equipped with the tools for actively promoting safer environments, transitional justice and opportunities for judicial reparation.

* * *

CHAPTER 6

Dissecting the Great Institutional Game: Tolls and Remedies

Institutional relations constitute the lion's share of what drives institutional progress. Helmed by highly politicized gambits, Canada's presently liberal human-rights agenda has of late sought to embed value in the worlds of Indigenous women. While the fact of the effort may be lauded from a teleological perspective (if nothing else), its quality and implementation value need to be addressed critically. Let us begin by considering that "the main goal of an organization is to exist, [meaning] it can be difficult to start examining systemic discrimination issues that may threaten that existence... violence against Aboriginal women has become 'institutionalized' and 'visible at all levels.'"¹²⁷ For police institutions such as the RCMP, correcting mechanisms have been permitted to remain structurally internal, making the organization's standard of accountability a self-validating one, and thereby encouraging a status quo that preserves their own exertion of power over the public, often at the cost of the State's obligation to protect vulnerable women and girls.

Lack of answerability to an external review body has heightened tensions and mistrust between the RCMP and Indigenous communities plagued by the MMIWG crisis. Considering that national institutional will has been repeatedly subjected to systemic bias against the credibility and valuation of Indigenous women's experiences of violence and discrimination, affected communities are in dire need of a multi-layered approach to reimagining the following elements, as relevant:

- (i) Trust building;
- (ii) Research methodology; and

¹²⁷ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice For Indigenous Women and Girls. Canadian Human Rights Commission. p. 34.

(iii) Division of powers.

The impact on investigations, and data collection and analysis will be manifold, and as such, should be noted as a priority in crisis management: Success and overall effectiveness of proposed plans of action is shaped by operational details. From a research perspective, using a qualitative data-gathering approach makes it possible for participants (women) to “speak about their experiences in their own words, [providing] the deeply textured [information] essential for understanding the impacts and consequences of violence”.¹²⁸

Creating a space for such narratives to be heard will initiate (i) — the trust building process — by facilitating the dialoguing process and help establish a clearer picture of what needs to be accomplished in terms of violence prevention, safety and justice. It is prudent to note that it is not sufficient to create an environment of safety for Indigenous women who are (/at risk of) being victimized; it is important for them to experience the feeling of safety and perceive the effort expected to bring about a change in their circumstances.

It falls to research bodies to cooperate with civil society, and grassroots activists from Indigenous communities directly affected by MMIWG, to engage multilateral collaboration in drafting recommendations to be carried forward to action by institutions of the State. Concrete assurances of inclusion for Indigenous women (e.g. ‘a seat at the table’, appropriately quantized representation at relevant council meetings) and knowledge sharing of existing human-rights / protection mechanisms will strengthen multilateral bonds and trust between engaged stakeholders.

¹²⁸ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 61.

For (ii), with different purposes deriving from different types of data collection methods and outlets (e.g. “[p]olice statistics; data from shelters, crisis centres, or other social medical service agencies; victimization surveys; and qualitative interview data”)¹²⁹, promoting innovation for process development will help “more fully explore assertions regarding gender symmetry which may result from the exclusion of women experiencing the most severe violence or those who won’t take the risk of disclosing these experiences to survey interviewers.”¹³⁰

In the patriarchal system that has controlled the nation for so many years, it has been observed that “major social institutions, practices, and ideological frameworks support, legitimize and facilitate male and masculine domination and the oppression and exploitation of women and many other men”.¹³¹ A purposeful overhaul of the principled bases of these institutions and ideologies could manifest in several ways, with variations of “gender mainstreaming [which] cannot be defined a priori but takes on meaning through organizational processes and politics[; the] implementation of gender mainstreaming is itself part of global gender politics.”¹³²

While it may well be the case that “[organizations] do not stand outside the global gender regime as its managers and guardians but are participants producing gendered rules and power relations through their practices,”¹³³ their capacities are circumscribed by social inhibitors of justice that affect both quantity and quality of data collected. The challenges of positively manipulating the sociopolitical institutions framing the MMIWG issue must be viewed as interrelated: With increased multilateral trust comes greater willingness for

¹²⁹ *Ibid*, p. 37.

¹³⁰ *Ibid*, p. 60.

¹³¹ Kubik, W. and Bourassa, C. “The Politics, Policies, and Travesty of Missing and Murdered Women in Canada.” *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada*. Demeter Press. Bradford, Canada. 2016. p. 29.

¹³² Jacquette, Jane S. [*contr.*] *Women and Gender Equity in Development Theory and Practice: Institutions, Resources and Mobilization. Mainstreaming Gender in International Organizations*. Durham, N.C. Duke University Press. 2006. p. 54.

¹³³ *Ibid*.

interpersonal and interorganizational cooperation, which in turn leads to proliferated narratives and testimonies in a more realistic hope of reparation and justice.

Appropriate delegations of power (iii) will act as enabling agents for change, cultivating a sustainable paradigm for sharing the burden of responsibility in a rights-oriented manner, with the best interests of Indigenous women and girls aligned with institutional capabilities and roles. For prevailing cases of murder, maintaining a strong sense of will, process, and separation of duties remains a significant challenge: For instance, it was noted that “[a]lthough the homicide reporting that began with the 2014 RCMP report is being continued through Statistics Canada, reporting on the numbers of [MMIWG] is apparently not, and there is no reporting on suspicious deaths.”¹³⁴

With especial consideration of Article 48¹³⁵ of the Beijing Declaration in context, it is observed that increased and improved coordination between data collection agencies will help clarify and standardize important categorical distinctions (e.g. for ‘suspicious’ / ‘non-suspicious’ deaths); consolidate and cross-reference investigation information (as relevant / permissible); and bring into better focus the full picture of the MMIWG crisis, in numbers and more. For Canada’s Indigenous women and girls, it is an outrage to be continuously subjected, even today, to the “obstinate passivity of the political and legal institutions [arguably] tied to colonial conceptions of [their] lives as [...] degenerate and disposable, [a concept rationalized] by the projection of criminality onto their bodies.”¹³⁶

¹³⁴ The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 13.

¹³⁵ “We will work towards reinforcing our own organisation, enhancing communications between us, and gain the space that is rightfully ours, as members of specific identities (nations and cultures) within the Decade of Indigenous Peoples and other institutions that represent governmental and non-governmental organisations.”

¹³⁶ Doenmez, C. F. T. “The Unmournable Body of Cindy Gladue: On Corporeal Integrity and Grievability.” *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada*. Demeter Press. Bradford, Canada. 2016. p. 112.

A rearrangement of the institutional order and form can no longer be a marginalized request but rather must be transformed into a powerfully demanded human-rights imperative to be echoed through the national inquiry and beyond.

* * *

CHAPTER 7

Accessibility of Justice: Systemic Barriers and Ladders of Possibility

As oppressive institutional regimes across Canada's social, political and legal spheres continue to exacerbate the existential crises of Indigenous communities, the impact is severe for Indigenous women and girls who remain at risk of violent victimization yet are grossly distanced from judicial reparation on all levels. Reported on by the CHRC in view of increasing access to human rights justice for Indigenous women and girls, a developmental round table process helped identify a total of 21 barriers [preventing Indigenous women from accessing human rights justice]:

Awareness; leadership; accessibility of human-rights information; re-victimization; fear of retaliation; intercultural understanding; human and financial resources; accessibility of justice system processes; the scope of the Canadian Human Rights Act; power imbalances; historical and ongoing colonization; education; linguistic barriers; mental health; confidentiality; economic barriers; trust; advocacy and legal supports; jurisdictional confusion; normalization of discrimination; and systemic discrimination.¹³⁷

While national justice processes need to account for the fact that several Indigenous cultures often prioritize the rights of the collective over the rights of the individual,¹³⁸ they tend instead to promulgate bias in proceedings, and indulge an archetype of self-validating dominance that serves to devalue the lives and conditions of Indigenous women. A clear example of such bias as it affects the administration of justice is illustrated in the following media research piece:

¹³⁷ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls. Canadian Human Rights Commission. p. 13.

¹³⁸ *Ibid*, p. 23.

“Many Aboriginal women feel that the system does not adequately investigate the deaths of women forced to live on the margins of society – prostitutes, drug addicts or those without homes. Nor are there enough convictions of offenders.”¹³⁹

It seems obvious that “perpetrators should be persecuted and the survivors be provided justice and rehabilitation services [as applicable],”¹⁴⁰ and this, with no discrimination toward (e.g.) sex work or other such marginalized activities on the part of the victim. For the infamous case of Edmonton sex worker Cindy, the following was noted:

“Despite admitting to causing the laceration [a four-inch vaginal wound] that resulted in Gladue’s death, the jury found Barton not guilty of first-degree murder and chose not to convict him of the lesser offence of manslaughter. Barton walked free.”¹⁴¹

Although Barton insisted the wounds were from “rough consensual sex,”¹⁴² toxicology reports indicated that Gladue’s BAC¹⁴³ was four times over the legal driving limit, meaning she would not, in fact, have been able to consent.¹⁴⁴ There exists a demonstrable “tendency of criminal justice personnel to see the violence as a single incident rather than an ongoing process that involves power and control by male partners over victims,”¹⁴⁵ reaffirming the underlying and systematic refusal to expose the nature of related structural discrimination occurring at all levels of judicial authority. As suggested by CHRC Chief Commissioner Landry at an advocacy conference¹⁴⁶, continued silence and indifference

¹³⁹ Jack Aubry, *Thunder Bay end of the line for many Natives*, The Ottawa Citizen, 8 mai 1993, p. B4.

¹⁴⁰ Jacquette, Jane S. [contr.] *Women and Gender Equity in Development Theory and Practice: Institutions, Resources and Mobilization*. Women, Gender Studies, and the International Indigenous Movement. Durham, N.C. Duke University Press. 2006. pp. 323-24.

¹⁴¹ Doenmez, C. F. T. “The Unmournable Body of Cindy Gladue: On Corporeal Integrity and Grievability.” *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada*. Demeter Press. Bradford, Canada. 2016. p. 111.

¹⁴² Johnston, J. and Scott, L. *Bradley Barton Trial in Killing of Cindy Gladue Enters Jury Deliberations*. CBC News, 17 March 2015.

¹⁴³ BAC: Blood Alcohol Content.

¹⁴⁴ Brake, J. *Cindy Gladue and the Fight for a ‘Fair Justice System’*. The Independent. Newfoundland and Labrador. 31 March 2015.

¹⁴⁵ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 164.

¹⁴⁶ The A Word: Reclaiming Advocacy. Presented by the Canadian Association of Elizabeth Fry Societies

regarding human rights injustices enables their perpetration, which in turn feeds the indifference, hypocrisy and helplessness preventing vulnerable persons from feeling their safety, dignity and status can or will be protected.

Although “traditional systems of justice were never designed with today’s issues in mind,” as noted by APTN investigative journalist Jorge Barrera, many Indigenous persons seek cultural antidotes to ease their pain and suffering. Healing, a term used to describe a “recovery process of victims of violence, abuse or addictions,”¹⁴⁷ is the conceptual basis for the “[t]raditional practices including pipe ceremonies, sweat lodges and healing circles and a return to traditional Aboriginal spirituality [that] have become widely accepted methods of healing for Aboriginal victims of violence and abuse.”¹⁴⁸

Now, while healing (strong elements of which include “closure, a restoration of dignity and feelings of self-worth, and the development of healthy connections with the memory of the lost relative, and with family, and communities”¹⁴⁹) was not the explicit aim of the MMIWG inquiry, it may be an outcome, though it needs to be none other than family members and loved ones of missing and murdered Indigenous women and girls to “determine what healing would look like.”¹⁵⁰ Persisting problems of furthering even tradition-based ideals concern the voices of at-risk Indigenous women themselves, and they are echoed across alternative approaches to seek justice:

“[D]espite how sentencing circles, which is one form of restorative justice, differ from traditional Aboriginal healing circles, their adoption has political implications for Aboriginal people who wish to return to self-government. As such, [a] key concern is that Aboriginal women, in particular, may feel pressured to

(CAEFS) on June 3, 2016, at the University of Ottawa.

¹⁴⁷ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 158.

¹⁴⁸ *Ibid.*, p. 166.

¹⁴⁹ NWAC Pre-Inquiry Report: Consultation with NWAC Regions. Native Women’s Association of Canada. p. 10.

¹⁵⁰ *Ibid.*

choose restorative justice over other more formal proceedings, even if it may not be in their best interests”.¹⁵¹

Federal policy must aim to marry valued aspects of Aboriginal culture to the national governance frameworks dictating Indigenous women’s access to justice while ensuring sensitized approaches to protecting against vulnerability to retaliation within their communities. Often, geographical factors compound inaccessibility in this regard, given that “in many places, particularly in remote communities, Aboriginal women must leave their communities in order to access services, such as women’s shelters and legal supports.”¹⁵² Across the different provinces and territories, various types of solutions have emerged to tackle the problem in a targeted manner — for instance, with the introduction of ‘mobile’ courts. Such solutions spawn their own specific complications in the process:

“[T]ravelling circuit court parties of predominantly non-Aboriginal rarely stay overnight in communities, and there is tremendous pressure to clear dockets in one day”¹⁵³ — coercing backlog reduction to become prioritized over adequate judicial deliberation over case details. The utility of this service remains bound by constraints of time and cost, and moreover is not an evenly applied process. As a result, many Indigenous women and girls have to seek support externally. For instance, in Ontario, “on-reserve Status women must have transportation costs to go to a shelter pre-approved by the welfare officer assigned to the land.”¹⁵⁴ The bureaucracy of such a process ignores the nature of urgency prevalent in many situations of violence faced by these women and can deter or intimidate the will to seek help in the first place.

¹⁵¹ Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 176.

¹⁵² *Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls*. Canadian Human Rights Commission. p. 26.

¹⁵³ *Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality*. p. 146.

¹⁵⁴ *Ibid*, p. 142.

On a local level, even when support resources are availed by Indigenous women and girls in need, the quality or effectiveness thereof can be questionable. In some cases, even frontline community support workers are unaware of the human rights involved or the resources available to persons experiencing discrimination or harassment.¹⁵⁵ As Indigenous organizations push to promote human-rights education across communities, the goal of capacity building has in certain cases come together with autonomous systems of local empowerment (as an example, a “decentral legal system is on the way in Nunavut where local community justice communities will handle the conflicts arising in small, local communities[; the] idea is that local people will handle local problems themselves”).¹⁵⁶

For judicial / human-rights support processes organized by State actors and CSOs¹⁵⁷, a number of elements need to be innovatively prioritized:

- (i) In State-controlled contexts of providing protection assistance, gathering testimony, and trying potential perpetrators in court, involved Indigenous persons need to be able to engage with the process in their own language(s).

Particularly considering cases in which prevalence of limited literacy skills is relevant, provision of appropriate linguistic support (or lack thereof) can have immense impact on prosecutions / sentencing, and other outcomes of court proceedings. As an example, there is no such word as ‘guilty’ in the Mi’kmaq¹⁵⁸ language, but there is a word for blame. So, a question such as ‘are you guilty or not?’ has, on multiple occasions, been misinterpreted

¹⁵⁵ Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls. Canadian Human Rights Commission. P. 26.

¹⁵⁶ Høgh, H. Finding the Balance Between Ethnicity and Gender Among Inuit in Arctic Canada. p. 77.

¹⁵⁷ CSO: Civil Society Organization.

¹⁵⁸ Original settlers of Atlantic Canada, the Mi’kmaq, are also referred to as Mi’kmaw, Micmac, or L’nu. The language is an Eastern Algonquin one, spanning the different Abenaki dialects, and remains a cultural symbol of importance within the traditional community of Mi’gma’gi.

by a non-native English speaker on the stand as ‘are you being blamed or not?’¹⁵⁹ Contextually speaking, in such situations, Indigenous women need to be able to be interviewed in their own language and in safe settings.¹⁶⁰

- (ii) Resources for human-rights education and protection, violence prevention, and safety need to be made readily available to those in need. The following narrative expresses the intense frustration of an Indigenous mother looking to improve her circumstances but being unable to do so:

“The more my husband drank the worse it got. My children would hide in the room and not make a sound. I could feel when he was going to get mad. [...] I nearly killed myself many times, but I would picture my children crying and I knew I could not let my kids be put away in an institution. I left him several times but he would promise to change, to get help. Well I have not seen help yet.”¹⁶¹

The commonality of such situations underscores the importance of developing a gendered approach to creating outreach platforms with awareness of cultural and domestic conditions involved.

- (iii) Reporting human-rights abuses and violations must be enabled through a direct and simple platform, with assurance that complaints review is conducted by qualified non-State bodies.

Through CHRC assessments of existing human-rights complaint mechanisms, it was found that the “length and repetitive nature of a dispute resolution process can cause

¹⁵⁹ Freda Ahenakew, Cecil King et Catherine H. Little John, Indigenous Languages in the Delivery of Justice in Manitoba, cité dans *Province du Manitoba*, p. 38.

¹⁶⁰ Johnson, H. and Dawsom M., Violence Against Women in Canada: Research and Policy Perspectives. Oxford University Press. 2011. p. 60.

¹⁶¹ Chambre des communes, Ma langue à moi, 1990. p. 6.

people to feel re-victimized throughout the process,”¹⁶² and that grasping or navigating within the Commission’s system is particularly overwhelming for a person already vulnerable or in distress.¹⁶³ Moreover, transparency in the complaint review structure can help mitigate the problem of underreporting. Lodging complaints against police agents, for example, can already be a complicated decision for a victimized Indigenous woman, and the fact that “there is no truly independent review process to investigate complaints against the RCMP[; that] the RCMP are asked to investigate themselves”¹⁶⁴ highlights the especial need for the following:

- (a) Alternative dispute resolution experts to help bridge gaps; and
- (b) Political dissociation of human-rights bodies such as CHRC from the federal umbrella.

As noted by roundtable participants, “[d]ispute resolution processes must be short [given that time] is often a luxury and a privilege.”¹⁶⁵ This sense of urgency is further echoed in the lack of faith in the scope and capability of human-rights justice for Indigenous women and girls. To this effect, another roundtable participant remarked: “[T]his human rights stuff is great, but do you just think you could get the police to stop breaking the fingers of our women [when arresting them]?”¹⁶⁶

Engaged institutional powers are called upon to reassess political hierarchies in light of the direly needed human-rights training / education crucial for embedding internationally recognized values for ground-level impact. CHRC has considered the creation of a guide on how to write a discrimination complaint,¹⁶⁷ to render the process more accessible for

¹⁶² Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls. Canadian Human Rights Commission. p. 19.

¹⁶³ *Ibid*, p. 28.

¹⁶⁴ *Ibid*, p. 25.

¹⁶⁵ *Ibid*, p. 28.

¹⁶⁶ *Ibid*, p. 20.

¹⁶⁷ *Ibid*, p. 29.

victimized persons. It has been further recommended that public hearings be held, making it possible for unique experiences of violence, victimization and discrimination to be shared by Indigenous women and girls (and/or have other relevant first-hand accounts be provided) regarding the specific human-rights violations at hand.¹⁶⁸ Narratives are the key to identifying specific, concrete hindrances in access to and administration of justice; and as such, predicate the development of a successful institutional response to the problem.

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¹⁶⁸ Framing a National Public Inquiry Workbook. Native Women's Association of Canada. 2015. p. 10.

CHAPTER 8

Policing and Investigations: Relations and Resolutions

Adequate and timely police response has a critical impact on investigations and prosecutions relating to MMIWG cases. The persisting danger of lost or destroyed evidence, undocumented injuries and statements,¹⁶⁹ remains deeply impactful for the deaths and disappearances, and as such, takes a severe toll on access to protection, safety and justice for Indigenous women and girls. Lack of effective police and/or judicial enforcement at such a time in the process (i.e. immediately after a reported crime or complaint) renders mandatory protocols and even court orders meaningless. The lack of trust and/or faith in police bodies is reaffirmed through repeated assertions that the fear of re-victimization is real and ongoing:

“Many Aboriginal women are reluctant to report spousal and sexual abuse to police for fear of being abused again, because police don’t provide adequate protection. Aboriginal women may also be ‘victimized and brutalized’ by police.”¹⁷⁰

Beyond this fear of police brutality, underreporting of cases and even concerns of danger experienced by Indigenous women and girls is still largely attributable to historical tensions with the RCMP, and ongoing perceptions of gendered bias and intersectional discrimination manifesting in police negligence or unwillingness to investigate fully — with particular consideration of the “rapid attrition [prevalent] at all phases of the criminal justice system, from the point at which police ‘unfound’ [reported cases] and [failed] to lay charges in cases considered legitimate, to when prosecutors discontinue cases and defendants are acquitted.”¹⁷¹

¹⁶⁹ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 148.

¹⁷⁰ As noted in *ARA Consultants*.

¹⁷¹ Johnson, H. and Dawsom M., Violence Against Women in Canada: Research and Policy Perspectives. Oxford University Press. 2011. p. 11.

Let us consider information and reporting from the police perspective: It has been the case that in Canada, “official statistics are not available by racial/ethnic group beyond Aboriginal status and this information is unreliable because not all police report this information.”¹⁷² Statistics on judicial follow-up with the information that does ultimately get reported (for cases of violence against Indigenous women and girls) are practically unbelievable, when considered holistically: Only 10 per cent of sexual assaults officially recorded by police result in conviction — which is half the rate of other assaults. If attrition is calculated on the basis of the number of women victimized, less than 1 in 100 sexual assaults results in conviction for the perpetrator(s).¹⁷³

The proclivity to let perpetrators walk in instances of aggravated, sexualized assault is well noted across Canada’s history of MMIWG court cases, and is indicative of the very real and absolute marginalization of female indigeneity as such. It has naturally followed that “important questions have been raised about aspects of police reporting[,] including claims about the solve rates for murders of Indigenous women[; in] short, reliable and comprehensive data is lacking.”¹⁷⁴ While the RCMP has insisted that “the majority of all female homicides are solved (close to 90%) and there is little difference in solve rates between Aboriginal and non-Aboriginal victims,”¹⁷⁵ findings from Indigenous organizations over the years has reflected otherwise, as depicted by this passage from an NWAC research initiative:

¹⁷² *Ibid*, p. 128.

¹⁷³ *Ibid*, p. 11.

¹⁷⁴ The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 13.

¹⁷⁵ Based on information provided upon request, via e-mail, by Sergeant Harold Pfeleiderer (Media Relations Officer, National Communications Services, RCMP), in June 2016.

“Nearly half of murder cases remain unsolved. Nationally, 53 per cent of murder cases have been cleared of homicide, while no charges have been laid in forty per cent of cases.”¹⁷⁶

Beyond claims that the police “tend to rule out murder to lessen their workload,”¹⁷⁷ an unstandardized spectrum of classifications and/or categorical distinctions¹⁷⁸ in context contributes heavily to the clash of data collection regimes across engaged institutions. At the related nexus of identity and differentiation, such distinctions have a specific impact on data collection and other information gathering processes, and stem from variant actionable policing agendas:

“[D]ifferences in police practice between agencies make it hard to create a data set that is comparable across jurisdictions. For example, in collecting data on homicides, some agencies use official Aboriginal “status” as the means to determine identity, others use officer discretion (as discussed above), and others rely on self-identification by individuals or their associations (family, friend etc.).”

Standardization of data has not been given priority owing to a lack of interagency cooperation. The conflicting reports on revealed data across different State and non-State agents are barely the tip of the iceberg when it comes to the full enumeration of polarized opinions on fulfilment of investigative activities. For case classifications, RCMP officials have asserted critical-response justifications with regard to their categorization process, as exemplified in the following passage:

¹⁷⁶ What Their Stories Tell Us: Research Findings from the Sisters in Spirit Initiative. Native Women’s Association of Canada. p. 10.

¹⁷⁷ NWAC Pre-Inquiry Report: Consultation with NWAC Regions. Native Women’s Association of Canada. p. 13.

¹⁷⁸ For example, a reported disappearance may be classified by the police as ‘suspicious’ or ‘non-suspicious,’ but the qualifying factors for each remain contentious, with regard to standards of acceptability, credibility and accountability.

“It might seem odd to describe any missing person's disappearance as non-suspicious. Unfortunately, however, this is frequently the case. A number of people disappear as a result of mishaps, e.g. a boating accident or recreational swimming drowning (43 of the 59 non-suspicious missing Aboriginal females are categorized as presumed drowning). While there is reason to believe they are very likely deceased, there is insufficient information to officially categorize them as such.”¹⁷⁹

NWAC has nevertheless championed the notion that “[a]ccidents, suicides, death and disappearances should be included ([...; that ‘murdered’ in and of itself] is too narrow a scope)”¹⁸⁰ within the scope of investigative reform under the inquiry’s mandate. The employed rhetoric to this effect has suffered from the political inertia affecting institutional engagement. With the continued squabble over funding allocations across all levels of government, consideration of re-opening cold cases ‘dismissed’ as non-suspicious has lacked for federal support in what is termed an ‘interest of feasibility’.

As the backlog deriving from interorganizational bureaucracy is protracted by existing patriarchal structures, victimized Indigenous women and girls are swept up in the struggle for valuation and humanitarian aid. A lack of sociopolitical impetus has stayed the hand of policy development in gender mainstreaming across police agencies; and in certain instances, the relevant tone-setting that occurs at the highest levels has not been sufficiently filtered down through to local police agencies. Without centralized instruction and strategic planning to help implement, and perhaps even more importantly, enforce the direly needed gendered and culturally sensitive approaches within policing practices, there has been little room for holistic advancement in this regard.

Perhaps more so than statistical or policy analysis, first-hand narratives starkly outline the completely urgent need to compel a paradigm shift in gendered relations within (and

¹⁷⁹ Excerpt from information provided upon request, via e-mail, by Sergeant Harold Pfeleiderer (Media Relations Officer, National Communications Services, RCMP), in June 2016.

¹⁸⁰ NWAC Pre-Inquiry Report: Consultation with NWAC Regions. Native Women’s Association of Canada. p. 13.

between) police units and Indigenous communities. As an example, I include a brief story shared at a panel for violence against women:

“As my partner and I were patrolling, we saw a man beating up a Native woman. When I wanted to intervene, my partner said, ‘No, he’ll take care of it.’ The man dragged the woman by the hair into an apartment building, and my partner said, ‘See, he took care of it.’”¹⁸¹

The sheer normalization of such an act as described reveals the status quo to be massively stacked against the socially constructed image of the repeatedly dehumanized Indigenous woman. Yet, it remains the case that for intervention and law enforcement, police policies and protocols are not applied in a sufficiently standard manner.¹⁸² Moreover, given that “[t]he mandate [of the inquiry] should [examine] police conduct with respect to vulnerable women and their families”,¹⁸³ the State is obliged to provide “trained crisis response teams and protocols to provide effective intervention and ongoing support to victims of violence and their families in Aboriginal communities.”¹⁸⁴ When interviewed, APTN investigative journalist Jorge Barrera noted the “public backlash” to ensue from police negligence or inaction is, at least in part, what has recently been driving positive progress in this regard. There are many personal narratives that have decried the systemic dismissal of reported missing persons or abuse; take the following, for instance:

“The RCMP is an accomplice to the crime when they ignore my call for help. They say they can’t do anything until the crime is committed. That is too late.”¹⁸⁵

¹⁸¹ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 148.

¹⁸² *Ibid.*

¹⁸² *Ibid.*

¹⁸³ NWAC Pre-Inquiry Report: Consultation with NWAC Regions. Native Women’s Association of Canada. p. 14.

¹⁸⁴ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 144.

¹⁸⁵ *Ibid.*, p. 148.

Indigenous voices across the country have called out in protest of the procedural inefficiency stemming from perpetuated bias against the aforementioned ‘high-risk lifestyles’ supposedly led by many Indigenous women; and discussions on policing and oversight failures for MMIWG cases have divulged the following (inter alia):

- “1) [D]elay in acting on reports of missing or murdered Indigenous women and girls;
- 2) [F]ailure to inform affected families about the status of investigations;
- 3) [L]etting investigations ‘turn cold’ without informing all affected parties;
- 4) [N]ot laying a charge, recommending a Crown not to change, and/or determining that a death or disappearance is a result of suicide, an accident, or a personal decision to disappear, without any explanation, or inadequate explanation, to affected parties;
- [5)] [F]ailure to recognize and investigate patterns of violence;
- [6)] [F]ailure to address the jurisdictional complexity of policing in Canada and to address this complexity and coordinate between police forces;
- [7)] [P]olice oversight bodies not adequately responding to complaints of police misconduct; and
- [8)] police being direct perpetrators of violence.”¹⁸⁶

In criticism of judicial response, enumerated failures have included the following:

- “1) Failure to diligently prosecute;
- 2) Decisions regarding prosecution based on sexist and racist stereotypes and attitudes about ‘believable witnesses’ and ‘likelihood of success’; and
- 3) Gender and race-biased judicial decision-making.”¹⁸⁷

While it is important for State agents to provide moral and monetary support to solutions developed in view of mitigating the above listed failures and salvaging this crisis of discrimination and inequality that so profoundly affects the women and girls of Canada’s

¹⁸⁶ The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 12.

¹⁸⁷ *Ibid.*

Indigenous communities, nuances of methodological approaches and procedural impact must be considered. Let us consider the following precautionary note, for instance:

“Crosscultural training that is short and superficial, provided by those not living in the culture or community, can do more harm than good. The high turnover of service providers prevents the development of a body of specialized knowledge about the community and its residents.”¹⁸⁸

When funding and political support for such training projects (and other, similar initiatives) is given sparsely or grudgingly, institutional awareness is focussed entirely too largely on aspects outside of long-term effects on women and girls of Indigenous communities ravaged by violence — underscoring the significance of actively involving local female representatives in advocacy and consultancy throughout the (e.g. training) process.

On the level of individual communities, multilateral discussions incorporating a ‘human’ (‘face-to-face’) approach in bringing together (e.g.) RCMP personnel and Indigenous men and women could be greatly beneficial, ideally with a view to sharing repressed sentiments of apprehension and appreciation and hope. A grossly politicized devolved power structure across the national governance framework has created a vast space between public servants, civil agents, and local residents — a space that cannot ultimately be closed solely through policy-oriented battles during which the engaged stakeholders on all sides do not ever quite see or understand the alternate points of view at play.

It is a space filled with wounds, new and old, that may be closed through a sense of community healing by way of speaking humanely and compassionately with one another — this, with a mutually enforced desire to improve trust and capacity building, and to

¹⁸⁸ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 143.

rejuvenate the spirit of protection and integrity in policing and investigations within the framework of the MMIWG crisis.

* * *

CHAPTER 9

Violence Prevention and Safety: Measures of Responsibility, Recursion and Effectiveness

Based on reports issued in 2015 following the MMIWG investigations conducted by the IACHR¹⁸⁹ and the UN Committee on the Elimination of Discrimination Against Women, the CEDAW¹⁹⁰ committee deemed Canada's lack of adequate violence-prevention efforts to be a grave violation of the rights of Indigenous women and girls.¹⁹¹ Across the different Indigenous communities, this violation is manifested in a number of ways, inter alia:

(i) Poor provision of safety and support services with regard to the following —

- Police / judicial protection from abuse, violence and brutality
- Community policing¹⁹²
- Human-rights education and awareness
- Legal aid and assistance¹⁹³
- Safety shelters¹⁹⁴ (space, accommodation)¹⁹⁵
- Child welfare

¹⁸⁹ IACHR: Inter-American Commission on Human Rights.

¹⁹⁰ CEDAW: Convention on the Elimination of all forms of Discrimination Against Women.

¹⁹¹ The National Inquiry on Murders and Disappearances of Indigenous Women and Girls: Recommendations from the Symposium on Planning for Change – Towards a National Inquiry and an Effective Action Plan. Feminist Alliance for International Action (FAFIA). Canadian Journal of Women and the Law. January 2016. p. 6.

¹⁹² As an alternative to traditional policing methods, this concept remains “poorly understood and unevenly implemented in many jurisdictions” ([Hon.] Oppal, Wally T. [Commissioner] *Forsaken: The Report of the Missing Women Commission of Inquiry*. British Columbia. 19 November 2012. p. 18.)

¹⁹³ At the CAEFS conference, APTN Investigative Journalist Jorge Barrera noted this as a particular issue: “Why are legal aid systems so underfunded?” [Ottawa, 2016.]

¹⁹⁴ In an exclusive interview in June 2016, in Ottawa, Canada, APTN investigative journalist Jorge Barrera noted that there are only 40 shelters across over 600 reserves in the country.

¹⁹⁵ As an example, of the 53 Inuit communities, all isolated / remote ones are lacking in infrastructure, and only 15 of them are equipped with safety shelters for women and children. [Based on information provided by Pauktuutit Inuit Women of Canada.]

(ii) Lack of culturally sensitized training programs in contexts such as —

- Policing and patrolling protocols
- Importance of private and interpersonal healing post-violence
- Circumscribed application of restorative justice systems
- Use of social and legal referents for Indigenous women (and other relevant categorical differentiations)¹⁹⁶

(iii) Perpetuation of patriarchal and colonial bias in the following aspects —

- Court proceedings and sentencing
- Gravity and thoroughness of investigative process (disappearances and murders)
- Political consultation on federal policies directly affecting Indigenous women

Created, developed and sustained through the social, political and legal institutions across the country, Canada's failures to adequately address systemic breaches of due diligence, elimination of discrimination by state and non-state actors, equal legal protection, and implementation of developmental measures geared toward the advancement of women,¹⁹⁷ have been disastrous for the image and position of the Indigenous woman. The sticking point is this: Such problems persist because they are actively allowed to persist, and even

¹⁹⁶ The notion of indigeneity continues to be painted (merely) in broad strokes, with the distinctiveness of different groups sweepingly homogenized. This tendency, borne of a political compulsion to superciliously affirm ineffective resolutions merely for the 'show' of it, serves as a failure to acknowledge cultural specificities that have grave effects on situational violence as experienced by the women and girls in various communities. Often, in the interest of grasping at whatever platform for inclusivity is finally made available, this kind of homogenization is accepted by affected Indigenous women's groups, for fear of losing even the inadequate means of advocacy that do exist.

¹⁹⁷ Nagy, R. "Transnational Advocacy for the Missing and Murdered Indigenous Women." *Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada*. Demeter Press. Bradford, Canada. 2016. p. 181.

strategically sustained by self-interested non-Indigenous parties in a marginalizing theft of social capital. It is only through the use of a vitally needed human rights-based approach that exposure to violence can come to be seen as a systemic deprivation of the gender equality and non-discrimination that has long been owed to Indigenous women and girls. Foreseeably requiring “broad structural changes (i.e. [in] policing practices, judicial [processes]) [that would help overcome the array] of service gaps [eliciting] temporary solutions”,¹⁹⁸ such an approach can bolster fulfilment of State obligation to comply with relevant ratifications (e.g. CEDAW, Convention on the Elimination of All Forms of Racial Discrimination and the UN Declaration on the Rights of Indigenous Peoples).

To consider the utility of factoring in a structural strategy, we must recall that established institutional frameworks have incessantly remained at the root of the problem: As we have seen throughout previous chapters, it is the institutionalized structures of Canada that have massively failed Indigenous women and girls in terms of protection against violence, and as such, remain the overarching reason that the MMIWG crisis still cannot be managed:

- **Social institutions** (e.g. community structures, family dynamics, cultural norms) have marginalized Indigenous women and girls by virtue of their intersectionality, and provided them little room for advocacy and/or valuation in the wake of this deadly crisis;
- **Legal institutions** (e.g. judicial oversight systems, correctional services, courts, national legislature) have stayed obstinately plunged in an intensely patriarchal system, and have played an undercover blame-and-shame game targeting Indigenous women and girls; and

¹⁹⁸ A Human Rights Violation Requires A Human Rights-Based Inquiry: Submission by the Canadian Human Rights Commission to the Government of Canada Pre-Inquiry Design Process. Canadian Human Rights Commission. p. 1.

- **Political institutions** (e.g. federal, provincial, local governments), concerned with survival and self-aggrandization in a crushingly competitive economy of dominance structures, have staked barely sufficient resources to the cause of eliminating or minimizing (risk of) violent victimization for Indigenous women and girls.

An effective strategy toward achieving adequate violence prevention and safety for Indigenous women and girls at risk will demand an acknowledgment not only of this elaborate institutional network that is subliminally obliterating chances of success in this regard, but also of the interrelated and compounded nature of all these factors. We may consider, for instance, the strong correlation between the MMIWG issue and the intergenerational legacy of the residential schools.¹⁹⁹ Accepting and understanding this link can help identify constructive means of enforcing rights protection within the very institutional rules of engagement themselves. It must be noted that ‘bending the rules’ to the advantage of the cause requires familiarity with what I will term ‘rule-structures’ — the rudimentary operational truths that keep the above-discussed institutions functioning in certain ways.

To illustrate the contextual value of these rule-structures, I will qualify them further, by descriptively enumerating their key components:

- Conduciveness to alignment with reigning political paradigms;
- Power dynamics evolved to meaningfully proliferate the authoritative capacities of institutional agents; and

¹⁹⁹ *Ibid.*

- A relational problem-solution narrative that is tactically gendered, de-gendered and re-gendered through manipulation²⁰⁰ of social circumstance, with a view to anthropological conditioning.

Adequate standards of violence prevention as put forth by the international community demand crimes of violence against women to be viewed and managed with no lesser a sense of gravity than would be lavished upon other violent crimes. The demand has not elicited a sufficiently thorough and ‘good-willed’ State response, as is evidenced by the several instances of gendered relations in domestic contexts (which, as we have already established is extremely relevant to the prevalence of the MMIWG phenomenon) that are not taken seriously in their own right:

“In cases of intimate partner violence, [...] an intimate relationship between a victim and an offender often led to cases being dropped unless the violence was so severe it was considered in the public interest to proceed.”²⁰¹

Considering the commonality of male perpetration of violence against Indigenous women and girls, it is crucial that “gender identity and broader cultural messages about masculinity [are recognized to be] central to men’s use [of] violence”.²⁰² In noting that “the concept of prevention of male violence against women has [been] broadened to encompass alterations to the physical environment, individual attitudes, bystander interventions, and community-societal-level norms,”²⁰³ we must consider how important it is for human-rights frameworks to be designed to check the pertinent institutional relations, and their underlying rule-structures, through a gendered lens. This is apparent

²⁰⁰ This manipulation is facilitated in large part by public-service or third-party efforts to retain patriarchal values and maintain the Indigenous woman as a cultural scapegoat in the disparaged landscape of post-colonial ‘nation-to-nation’ relations.

²⁰¹ *Ibid*, p. 170.

²⁰² Johnson, H. and Dawsom M., *Violence Against Women in Canada: Research and Policy Perspectives*. Oxford University Press. 2011. p. 7.

²⁰³ *Ibid*, p. 182.

given that the intercultural repercussions of constructing post-colonial norms have been intensely impactful on Indigenous women:

“[They] must engage in two simultaneous struggles – to restore equality with Aboriginal men and to strive to attain equality with non-Aboriginal women. It has been said that violence in Aboriginal families and communities is a reaction against systems of domination, disrespect, and bureaucratic control.”²⁰⁴

Efforts in violence prevention and safety for at-risk persons and communities constitute steps toward disengaging the Indigenous woman from bearing the brunt of this ‘reaction’. It may further be noted that the recursive nature of institutional dominance²⁰⁵ over the lives and conditions of Indigenous women and girls today warrants a similarly ‘repetitive’ or progressively cyclical²⁰⁶ framework of solutions. From a holistic viewpoint, although the Canadian justice system has been admonished by Indigenous organizations for its overall “ineffective[ness] at ending violence and achieving equality,”²⁰⁷ shifted political will under the Trudeau administration has, at the very least, not impeded further media attention on the MMIWG crisis, enabling the creation of more broad-based public platforms for civil engagement in the cause. Over the years, national media outlets have started taking a more vested interest in disseminating a rhetoric that captures the due differentiations owed to the specificity of Indigenous woman-/ girlhood in contemporary contexts.²⁰⁸ Canadian and Aboriginal panels have helped contextualize such specificities as hard realities requiring remedial solutions — for example:

²⁰⁴ Ontario Native Women's Association, *Breaking Free: A Proposal for Change to Aboriginal Family Violence*, Thunder Bay, Ontario, 1989, p. 8.

²⁰⁵ As relevant to the seemingly monolithic circumstance of violent victimization caused by social, legal and political ostracization that has been repeatedly occurring over the past several decades.

²⁰⁶ A ‘rinse-and-repeat’ approach, for instance, when applied in context to pedagogical methods in human-rights education across Indigenous communities, can help to more effectively imbibe institutional values more amenable to the protection of Indigenous women and girls.

²⁰⁷ Ontario Native Women's Association, *Breaking Free: A Proposal for Change to Aboriginal Family Violence*, Thunder Bay, Ontario, 1989, p. 147.

²⁰⁸ As suggested in discussions with a contemporary media expert involved with special projects on MMIWG stories.

“For a [female] victim of violence in an Aboriginal community, disclosing her abuse would publicly shame her family and could result in [her] being ostracized by the family, her only means of support.”²⁰⁹

More to the point, the necessitated remedial solutions must derive from institutional means. Challenging the nature of domestic relations between sexes across Indigenous communities has been undertaken primarily through variant sources of organizational recommendations. Implementing issued recommendations discussed at the Symposium on Planning for Change: Towards a National Inquiry and an Effective National Action Plan (held on January 30-31, 2016),²¹⁰ for example, was noted to be a necessary priority in the immediate aftermath of the inquiry’s start-up phase. However, given the previously discussed failures to (i) address needs and obligations of Indigenous women and girls, and (ii) implement relevant recommendations within critical timeframes, it has been observed that existing strategies need an innovated touch, particularly with regard to making both men and women a part of the solution to the problem of violence against Indigenous women and girls.

During my term in the Violence Prevention and Safety sector of NWAC, I was exposed to various different ideas and tools in nascent stages of development — ones in the process of concretizing the needed strategic innovation and aiming specifically to better equip Indigenous women and girls for independently handling situations of abuse and violence. One such initiative was Project PEACE²¹¹, a three-year project funded by the Status of Women, which has as its main objective to “create safety nets for Aboriginal women and girls through [PEACE] mechanisms in the form of a toolkit addressing issues of violence

²⁰⁹ Aboriginal Women: From the Final Report of the Canadian Panel on Violence Against Women. Changing the Landscape: Ending Violence – Achieving Equality. p. 128.

²¹⁰ The symposium participants consisted of a group of 40 Indigenous women leaders, family members of MMIWG, academics, supporters, and 6 UN and IACHR human-rights experts.

²¹¹ PEACE: Prevention · Education · Action · Change · Evaluation.

and perceptions of safety experienced by Aboriginal women and girls.”²¹² This and similar toolkits being designed spanned a useful spectrum of information, inter alia:

- Identifying warning signs and elements of different types of abuse or violence, and other human-rights violations;
- Procedures and checklists²¹³ on leaving a domestic setting in which abuse and/or other forms of violence were prevalent;
- Emotional, psychological and physical safety plans;²¹⁴
- Body awareness exercises;²¹⁵ and
- Lists of support / resource centres within travelling distance.

The empowerment surge spawned the launch of projects on the converse side as well — as an example, the *Kizhaay Anishinaabe Ojibwe*²¹⁶ project challenged normative ideas of power and responsibility that comes with the role of a man in an Indigenous community. Regarding NWAC tools developed in the same vein for men’s training to the same effect, there remain several areas for improvement. As I assessed the preliminary draft of *Creating Safety Through Unity: A Toolkit for Aboriginal Men and Boys*,²¹⁷ which was recently pilot-tested²¹⁸ across a sampling of Indigenous communities, I found deficiencies in the following aspects:

²¹² Creating Safety Through Unity: A Toolkit for Indigenous Women and Girls. Native Women’s Association of Canada. 2016. p. 5.

²¹³ For example, this would include tactical suggestions on packing an emergency bag, arranging for a safe space outside of the setting of violence, anticipating needs for days following an emergency departure, retaining safety contact information, reporting a missing person, managing stress and anxiety, and so on.

²¹⁴ Core concepts expressed would center on elements of calmness, strength, health, peace, positivity, support, etc.

²¹⁵ These types of exercises coerce realization on physiological indicators of negative feelings that often trigger acts of violence. Identification of these feelings in context might involve noting points of tension and stress, and figuring out cause-and-effect patterns that advance self-awareness in a constructive way.

²¹⁶ Ojibway: ‘I am a kind man’.

²¹⁷ Native Women’s Association of Canada, March 2016.

²¹⁸ At an NWAC meeting led by Gail Gallagher; Senior Manager, Violence Prevention and Safety; in July 2016, it was noted that the feedback for the pilot-testing sessions was overall positive, albeit there was a large influx of suggestions for change, mainly in terms of including additional content, altering the chronology of presented concepts, and modifying the sections structurally.

- Differentiation based on gender-specific issues;
- Focus on ‘men identifying men’ with regard to concrete acknowledgment and improvement of interactions with (e.g.) fellow community residents;
- Exploration of ‘masculine’ (as-such) identities in a culturally sensitized manner;
- Interaction differentials with the other sex; and
- Contextualization of domestic relations and family violence.

Without systematic approaches to planning and execution with regard to sensitizing a renewed valuation system to developing gender roles and the position of Indigenous women and girls in today’s society, the veils of bias and discrimination as relevant will remain unlifted, leaving risk of violent victimization effectively unmitigated. Successfully overcoming the challenges of pinpointing causal chains leading to violent behaviours that target Indigenous women and girls will require engagement of the involved institutions at all levels.

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RECOMMENDATIONS & CONCLUDING REMARKS

Based on discussions throughout preceding chapters, it is evident that the social, legal and political institutions in Canada continue to exert hegemonic influences over the valuation of Indigenous women and girls across the country. Dominating rule-structures of these institutions have enabled the perpetuation of highly aggravated and deadly circumstances, in which female indigeneity has become a sacrificial scapegoat flung to the wolves of a historical ravage of identity, power and position — seething and alive well beyond the intergenerational trauma of the residential school crisis.

As predicted in my hypothesis, this state of affairs has significantly conditioned the extent to which Indigenous women and girls are subjected to human-rights violations. Although under the Trudeau administration, Canada has launched the long-awaited national MMWIG inquiry, the several conceptual and operational flaws that are still not being addressed, particularly in terms of representational advocacy and investigative reform, are testament to how far we still are from abolishing the systems of marginalization and intersectional discrimination affecting Indigenous women and girls.

Drawing on my observations and findings, I have developed the following minimal-remodel matrix of recommendations (using tools, plans and concepts in effect, and extrapolating them in practical ways)²¹⁹ as first-steps toward making justice a more achievable reality, contextually. In the interest of ‘achievable’; the preliminary strategies I have outlined, although by no means extensive ones, are designed in the interest of improving upon already existing systemized procedures rather than ‘reinventing the wheel’ altogether, so to speak.

²¹⁹ See Fig. 2. *The Minimal Remodel Matrix: A Précis of Targeted Recommendations for Institutional Engagement* (p. 77).

**Fig. 2. The Minimal Remodel Matrix:
A Précis of Targeted Recommendations for Institutional Engagement**

Precursory	Operational	Structural
Develop a centralized danger assessment tool There exist several innovative tools for combatting family violence in the Americas. Why not re-appropriate the most relevant templates of those to the cause at hand to design a risk and violence assessment mechanism that can more effectively gauge the day-to-day conditions of Indigenous women and girls prone to violent victimization? <u>Preliminary requirements (as anticipated) for actionable elements:</u> 1. Extrapolate aspects to consider: Personal	Quantify the recommendation evaluation process For (e.g. NWAC) violence-prevention toolkit data analysis procedures, it was found that the most effective standards of feedback processing remained a point of contention. To inject an evenly applied standardization measure would help speed up the process, thereby facilitating efficiency in follow-up implementation processes. Why not incorporate a system of quantification into existing feedback	Implement a bottom-up approach to policy development Many of the existing gaps in accessibility and administration of justice are attributable to lack of coordination and communication between high-level and low-level stakeholders. Using a bottom-up approach as a converse strategy (to traditional top-down modelling) for policy advocacy, engagement and implementation can help mitigate this problem, if contextualized in a sufficiently specific, targeted manner.

circumstances; family dynamics; emotive development; mental stability; economic situation; history of victim-offender relationship (as relevant); types of abuse faced (based on enumerated benchmarks/indicators); etc. 2. Appoint centralized implementation teams to design data influx methodology in line with protective priorities: Representational advocacy (spanning the capacities of Indigenous language experts, Indigenous activists, social science researchers, safety consultants, legal service officials, police	assessment designs to level inoperative bureaucratic procedures? <u>Suggested steps to launch quantification process:</u> 1. Proliferate number of broad categories of assessment for toolkit content: Quality of pedagogy; versatility of learning materials; depth of learning impact on community relations; extensiveness of concept-practice structure; ground-level repercussions in power paradigms; etc.	<u>Applicable processes / frameworks to enhance interagency cooperation:</u> 1. Bring together already cooperating parties in policing jurisdictions: Establishment of a common medium by means of which to send system-wide communications; schedule representative meetings for cross-referencing procedures (in terms of effectiveness, feasibility, fairness and accountability); and create intermediary roles
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agents, etc.); capacitation of judicial powers to definitively expand the legal sense of protection; and accessibility of justice and relevant service provision. 3. Establish a clear roadmap of longer-term monitoring of results following danger assessment: i. Evaluation of comprehensiveness (<i>how effectively were the pertinent conditions of danger scoped?</i>) ii. Identification of derived conclusions and	2. Design ‘rateable’ structures for detailed questions in each category²²⁰: Use of gradable values to conceptualize processing standards;²²¹ simple systems of rating, such as ‘1-10 scales’ or multiple-choice; and designation of form-processing resources to the task of consolidating outcomes efficiently. 3. Establish a periodic results review process: To more extensively	to facilitate discussion on standardizing due-diligence procedures where relevant. 2. Establish streamlined channels of communication to feed periodic status-quo reports to governance authorities: Appointment of multi-jurisdictional ombudspersons; liaisons with operational policy analysts in authoritative positions; creation of space for dialogue on
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²²⁰ The idea is measurement — in this case, enabling workshop participants to employ simple numeric standards to measure gaps, effectiveness, usefulness, practicality, and so on, of the toolkit teaching / presentation).

²²¹ For example, a ‘scoring’ system can be set in place with ranges of answers (quantified scores) denoting respective levels of required action in certain problem areas, and so on.

priority recommendations <i>(in what ways can the results derived from the danger assessment tool be made useful to engaged stakeholders?)</i> iii. Assignment of strategized labour division across State and non-State bodies to manage risk mitigation <i>(which parties are best suited to assume responsibilities in implementing adequate control variables to better protect against violent victimization, and how can this be accomplished</i>	monitor the scope of development in (e.g.) gendered relations following educational human-rights initiatives such as toolkit workshops, have the (e.g.) questionnaire be answered periodically, and any changes in answers (as statistical results) be recorded in scientific manner. Implementation follow-ups should take cues from the findings derived from this process.	improvements to police proceedings in view of human-rights justice, etc. 3. Lobby for best-practices in accountability through clear and consistent communications procedures: Enforcement of mandatory data-collection cross-referencing protocols among civil and State actors; organization of regular meetings between federal policy drivers, local police representatives, grassroots activists, as well as other potentially
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<i>within critical timeframes as needed?)</i>		influential change agents; and development of independent police review mechanisms across all provinces and territories. ²²²
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In sum, I reiterate that the problem of violent victimization faced by Indigenous women and girls, and the MMIWG crisis in its own right, across Canada is indeed an institutional problem, and as such, merits an institutional solution engaging a multilateral strategy to mitigate risk and rights violations.

Moreover, such a solution needs to be enshrined in the legal infrastructure and tactical devolution of governance powers, to effectively rebuild the fragile gender architecture that has thus far failed to elevate female indigeneity to its rightful position in post-colonial affairs of modern-day Canada. For this to be made possible, increased interagency cooperation needs to be actively promoted through a purposeful rearrangement of hegemonic structures currently in place. We can recall the following:

- On a societal level, attitudinal biases that have demonstrably proven to violate the rights of Indigenous women and girls need to be curbed through systemic reaffirmation of cultural identity;

²²² Example of good practice: The OIPRD (Office of the Independent Police Review Director) is an external and independent police oversight body operating in Ontario. Not all provinces / territories have such a body and as such maintain policing systems that are self-correctional through strategically cyclical review processes.

- On a judicial level, legal principles, mechanisms and frameworks that are capacitated to endow or deny humanist values must be proliferated in view of protecting victimized and at-risk persons in Indigenous communities across the country; and
- On a political level, platforms for active research- and development-oriented policy advocacy must be made accessible to Indigenous women and girls, so they can continue campaigning for their rights in safe and public fora.

By promoting educated awareness of claiming and protecting the human rights of these Indigenous women and girls, and setting a meticulously nuanced precedent for putting involved social, legal and political institutions on the right track, there is hope that Canadian justice will finally begin lifting victims, survivors and those at-risk, to platforms for reparation and healing.

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- Statistics Canada
- Aboriginal People's Television Network (APTN)

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ABSTRACT (Deutsch)

Worin liegen die Gründe dafür, dass Kanada systematisch daran gescheitert ist, die Rechte indigener Frauen zu stärken? In welchem Ausmaß konnten nationale Kampagnen zur Gewaltprävention den Anstieg der Fälle von “MMIWG” (vermisste und ermordete indigene Frauen und Mädchen) verhindern? Was sind die gesellschaftlichen und institutionellen Hürden, die indigene Frauen noch immer daran hindern, die nationalen Justizmechanismen für sich in Anspruch zu nehmen?

Die Untersuchung dieser Fragen zeigte, dass Frauen aus indigenen Gemeinden im Gegensatz zu nicht indigenen Frauen, einem höheren Risiko ausgesetzt sind, von sexueller und rassistisch motivierter Gewalt betroffen zu sein. Zusätzlich fehlt betroffenen Frauen und Mädchen ein angemessener Zugang zu den Justizbehörden. Da es im ganzen Land eine überproportional große Anzahl an “MMIWG”-Betroffenen gibt, wurden Maßnahmenforderungen indigener Organisationen durch zahlreiche Vorschläge ergänzt, wie man mit der landesweiten Untersuchung, die vor kurzem von der Trudeau-Regierung in Gang gebracht wurde, weiter verfahren sollte.

Obwohl der Schutz der Menschenrechte mit immer größerer Beharrlichkeit gefordert wird, haben sich die erhöhten Anstrengungen mehrheitlich als strategisches Geben und Nehmen politischen Kapitals zwischen den Akteuren erwiesen. Die vorliegende Arbeit untersucht, wie die anhaltenden Spannung zwischen verschiedenen Institutionen zu empörenden Lücken in der Implementierung von Aufklärungs- und Präventionsmaßnahmen führen, die indigene Frauen noch weiter von der Wahrnehmung ihres Rechts auf Sicherheit und Gerechtigkeit entfernen.

Methodische Schwächen in der Datenerhebung und -analyse, die bestehenden Rechtsgrundlagen und die polizeilichen Verfahrensweisen, werden im Detail analysiert und mit den benötigten, zeitgemäßen Maßnahmen im Kontext von “MMIWG”-Fällen

verglichen. Nachdem die entsprechenden Lücken identifiziert sind, werden konstruktive Vorschläge für eine notwendige Reform auf Bundes-und Länderebene in einer Matrix zusammengefasst.

SCHLÜSSELBEGRIFFE

indigene Frauen · “MMIWG” (vermisste und ermordete indigene Frauen und Mädchen) · Gewalt gegen Frauen · Institutionalisierung · Justiz

[Translated from the English by Florian Lang]

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