



THE POWER OF WOMEN WORKING TOGETHER  
LA PUISSANCE AU FÉMININ: ENSEMBLE POUR RÉUSSIR.

**Canadian Federation of University Women (CFUW)**

**Submission on the Occasion of Canada's 3<sup>rd</sup> Universal Periodic Review**

**Submitted October 5, 2017**

**About CFUW/FCFDU:** CFUW is a non-partisan, self-funded organization with Clubs located in every province across Canada. Since 1919, CFUW has been working to improve the status of women, to promote human rights, public education, social justice, and peace. CFUW awards over \$1 million annually in scholarships, bursaries and fellowships to women and girls for post-secondary education. It holds special consultative status with the United Nations (ECOSOC) and belongs to the Education Committee of the Canadian Commission for UNESCO.

**Contact:** Executive Director, Robin Jackson at [cfuwed@rogers.com](mailto:cfuwed@rogers.com)

Telephone: (613) 234-8252 (102) Fax: (613) 234-8221

[www.cfuw.org](http://www.cfuw.org)

## **Violence against Women (VAW)**

The United Nations identifies Gender-based violence as a significant barrier to human rights and to realizing gender equality<sup>i</sup>. Since Canada's first UPR review, the Canadian government has taken several steps to tackle VAW including the development of a strategy to prevent violence and the implementation of the National Inquiry on Missing and Murdered Indigenous Women and Girls. However, critical legislation and actions to prevent and protect women from violence, including extreme forms of VAW, as well as comprehensive funding and monitoring tools have yet to be adopted.

Violence against women<sup>ii</sup> (VAW) continues to be a major tragedy and statistics show no significant reduction of the problem. Both the statistical data on police-reported violent crimes and self-reported sexual assaults indicate that women are more likely to suffer from these acts, as they represent more than 80% of the victims<sup>iii</sup>. Although there has been a decrease in the rate of female intimate-partner homicide between 2012 and 2015, women are still four times more likely than are men, to be murdered by their intimate partner<sup>iv</sup>.

Since 2004, the rate of other violent and nonviolent crimes has decreased, but the rates of sexual assault remain unchanged<sup>v</sup>. Police-reported sexual assault decreased by 20% between 2004-2014 which indicates the occurrence of this crime can't be solely assessed by police-reported acts. More than 8 in 10 sexual assault incidents remain unreported.

Indigenous women, young women (15-25 years old), women with disabilities, women with mental health issues, and women belonging to the Lesbian Gay Bisexual Transgender Queer Two-spirited (LGBTQ2S) community experience higher rates of violence. Being homeless or a student increases vulnerability to violence<sup>vi</sup>.

Canada accepted several recommendations on VAW in its 2009 Universal Periodic Review (UPR), including Recommendation 27 and the underlying principles of 33, 34, 35, 36, 37 and 38 and other related recommendations<sup>vii</sup>. In its second UPR review, Canada accepted recommendations urging the State to continue its efforts to prevent, punish and ensure effective means of protection against all forms of violence against women and girls, particularly Indigenous women and girls. It accepted recommendations to closely monitor the progression of women's rights among other elements.

### **1. STRATEGY ON VIOLENCE AGAINST WOMEN:**

Funding to address violence against women has increased since the last UPR report. In July 2017 the Government launched a plan called "It's Time: Canada's strategy to Prevent and Address Gender-Based Violence" (GBV), investing \$100.9 million over five years in a "whole-of-government approach" to prevent and address GBV<sup>viii</sup>. CFUW notes with approbation the integration of multiple government departments in the plan to prevent

violence. We also applaud the government's decision to bring back funding for research and advocacy on GBV.

However, CFUW observes the absence of clear targets and timelines to measure the government's progress in providing services to protect women and girls from, and reduce their vulnerability to, violence. Setting these targets is essential for the government to be accountable to its strategy on GBV and for establishing an effective monitoring process.

**CFUW recommends that the Government of Canada:**

Further coordinate, in its whole-of-government approach, with concerned departments, especially with Indigenous and Northern Affairs and the Department of Families, Children and Social Development, to address the barriers for women to live free from violence, including poverty, lack of access to quality affordable childcare, the gender wage gap, homelessness and lack of affordable housing;

Engage with stakeholders to develop sustainable long-term funding, to integrate strategies to prevent GBV, using measurable comprehensive targets based on an intersectional, gender and human rights approach as well as transparent accountability mechanisms;

**2. VAW ON CAMPUS:**

In Canada, young women attending an education facility are at high risk of sexual assault. Of all self-reported sexual assault in 2014, 41% were reported by students, 90% committed against women<sup>ix</sup>.

In fall 2016, CFUW presented a brief to the Status of Women Committee for their Study on Violence against Young Women and Girls which underlined the need for a Canada-wide action plan to prevent and address VAW on campus. Currently, only Ontario, British Columbia and Quebec legislate the mandatory adoption of sexual assault policies in their universities. The absence of uniform standards means that existing policies, along with their implementation processes, are often ambiguous or inadequate.

**CFUW recommends that the Government of Canada:**

Pass legislation mandating the adoption of a Canada-wide, comprehensive sexual assault policy and prevention strategy that includes training on gender stereotypes, bystander intervention, consent, and racial exploitation;

Conduct further research into sexual assault on campus and provide post-secondary institutions with a model for safe reporting.

### 3. ACCESS TO JUSTICE:

Private member Bill-C337 *an Act to amend the Judges Act and the Criminal Code (sexual assault)* that demand compulsory training on sexual assault law for judges was introduced to the House of Commons in February 2017. It followed several court decisions by judges who exhibited victim-blaming attitudes and a lack of understanding of the definition of consent when ruling on cases of sexual assault and domestic violence<sup>x</sup>.

Bill-C337 is essential for access to justice by victims of sexual assault, however it does not target police officers, lawyers and prosecutors who are often the initial contact domestic violence and sexual assault survivors have with the justice system.

#### **CFUW recommends that the Government of Canada:**

Amend Bill-C337 to include specific mandatory training on sexual assault for all public servants across the government, police and the justice system to combat gender stereotypes, victim-blaming, and rape culture, as well as specific stigmatization faced by Indigenous women, racialized women, migrant women, women belonging to the LGBTQ2S community, sex workers, women with disabilities, and homeless women;

Ensure the implementation of trauma-centered and culturally-sensitive protocols for law enforcers working with survivors of GBV.

### 4. VAW – NON-STATE TORTURE (NST)

The *Criminal Code of Canada* enables individuals that have suffered from acts of torture to take legal action against their perpetrators when these acts are committed by State actors but denies this right when the same acts are committed by non-State actors. This judicial gap has been identified and denounced by activists and human right bodies for more than **two decades**. Yet Canada has failed to acknowledge and address the situation despite Police reports, court cases, and testimonies attesting to this ongoing violation of human rights<sup>xi</sup>.

The right to live free from torture is an absolute and non-derogable human right. This right applies to all human beings - including women and girls - as stated in Article 5 of *The Universal Declaration of Human Rights*. Article 1 of *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, identifies the central elements of torture by non-State actors. Paragraph 18, *General Comment No. 2* of the CAT committee explicitly states the State's obligation to prevent and protect from acts of torture committed by non-State officials or private actors. Moreover, the Committee on the Elimination of Discrimination Against Women's *General Recommendation 19 (7)*, Article 3(h) of *The Declaration on the Elimination of Violence against Women* and Article 7 of *The International Covenant on Civil and Political Rights* reinforce the State's

obligation to protect a person from an act of torture irrespective of who the torturer was/is and without discrimination.

The CAT Committee formulated its regrets following Canada's refusal to recognize specific acts of violence against women as acts of torture falling within the realm of the CAT convention in its 24<sup>th</sup> Session Report (June 2012). The Committee explicitly pointed out the State's responsibility under the Convention, "for consenting to or acquiescing in acts of torture or ill-treatment committed by non-State officials or private actors"<sup>xii</sup>. It made the recommendation that Canada strengthen its efforts to exercise **due diligence**, to intervene, to stop and to punish acts of torture or ill-treatment committed by non-State officials or private actors, as well as provide remedies to victims.

In Canada's 2013 UPR review, the Human Rights Committee recommended to "ensure the full transposition into national law of the provisions of the CAT." Moreover, CEDAW Committee, in its 2016 combined 8<sup>th</sup> and 9<sup>th</sup> periodic report recommended that Canada "effectively **enforce its criminal legislation** at the federal, provincial and territorial levels and ensure that all cases of violence against women are thoroughly and effectively investigated and perpetrators prosecuted and adequately punished."

Private member Bill C-242 *an Act to amend the Criminal Code (inflicting torture)* was submitted to the House of Commons in 2016. The bill passed the second reading and went on to be studied by the House of Commons Standing Committee on Justice and Human Rights. It did not move to 3<sup>rd</sup> reading. The Committee argued that the existing disposition of aggravated assault or aggravated sexual assault in the *Criminal Code of Canada* are sufficient to deal with acts of torture by non-State actors.

Moreover, Minister of Justice Jody Wilson-Raybould, who was consulted beforehand by the Committee, maintained the legal position that only individuals tortured by state actors can initiate judicial procedures for acts of torture, therefore **disregarding the international body of evidence** and recommendations made by the UN human right mechanisms<sup>xiii</sup>.

The absence of a specific disposition in the *Criminal Code of Canada* on NST limits the authorities' awareness of the situation and the State capacity to effectively prevent, protect, punish and offer redress to individuals that are vulnerable to these extreme acts of violence. To that effect, Canada fails to exercise due diligence, particularly in light of the long-standing knowledge of the problem and inaction on the situation. Because women and girls are most vulnerable to acts of torture in the domestic sphere, the current legislation generates gendered legal discrimination, violating CAT and CEDAW's principle of non-discrimination. Moreover, the current lack of a data collection system on

NST contributes to the victims' invisibility and makes it impossible to develop a plan to directly address this extreme form of violence.

**CFUW recommends that the Government of Canada:**

Immediately amend the *Criminal Code of Canada* to include torture committed by non-State or private individuals and organizations (non-State actors) as a specific and distinct criminal offence;

Exercise due diligence by immediately initiating appropriate measures into Canadian policies and practices, to ensure that no person is subjected to torture by non-State actors and that a data collection system on NST be set up;

Respects the priority of gender-sensitive frameworks on the United Nations agendas, given that women and girls are disproportionately affected by extreme forms of violence.

**5. VIOLENCE AGAINST INDIGENOUS WOMEN AND GIRLS:**

Since Canada's last UPR review, the statistics on violence against Indigenous women remain significantly high. In 2015, the rate of homicide for Indigenous women was 6 times higher than for non-Indigenous women. Indigenous women also represent ¼ of the victims killed by casual acquaintance and are 2 times more likely to be sexually assaulted. As the inquiry is underway, representatives from Indigenous government are calling for **immediate actions** to prevent and address violence against Indigenous women and girls<sup>xiv</sup>.

**CFUW recommends that the Government of Canada:**

Guarantee sufficient funds to ensure the basic human right to safe drinking water, housing and shelters, childcare, access to healthcare and mental health services and that the services provided are culturally sensitive and gender specific;

Immediately initiate an awareness-raising campaign aimed at Indigenous and non-Indigenous persons that tackles the wounds of colonialism and the root causes of discrimination and violence against Indigenous women.

**5.1.THE INQUIRY:**

On September 1, 2016, following years of pressure from Indigenous families and communities, Indigenous organizations, human rights organizations, and international human rights bodies, Canada initiated the National Inquiry on Missing and Murdered

Indigenous Women and Girls (MMIWG). The establishment of the Inquiry has been one of the most salient recommendations from Canada's first and second UPR review, the concluding observations of the 2016 CEDAW committee, and the 2013 report of the Special Rapporteur on the Rights of Indigenous Peoples.

Upon submission of this report dated October, 2017, the Inquiry was confronted by obstacles that prevented it from realizing its three key goals of "Finding the truth", "Honoring the truth" and "Giving life to the truth as a path to healing".<sup>xv</sup> Native Women's Association of Canada (NWAC), in its Inquiry Report Cards, underlines the key elements that risk the success of the process, which includes the failure to establish from the beginning a clear and transparent communication process and the failure to reach out to the communities and establish trust<sup>xvi</sup>.

The positions that were created to support and communicate to the families remained understaffed for 8 months. Ontario Native Women's Association (OWNA) reported in July 2017 that many families of the MMIWG did not receive communication from the commission since it was formed last September 2016<sup>xvii</sup>. Families remained in the dark as to the timeline of the inquiry, the locations of the hearings, updates on the overall process, and how to engage with the Inquiry.

Additionally, the commission focused its communication using an online process that does not take into account the most marginalized population and people living in rural and remote areas where access to the internet is limited or non-existent.

NWAC also indicates that the process is not trauma-informed, as families have to go through a legal assessment of the cases before they are allowed to speak with the commissioner. Due to this procedure, only 150 out of 300 families will be able to tell their stories in front of a commissioner; the others will speak to statement takers<sup>xviii</sup>.

There is an urgent need to **put the families at the center of the inquiry** and give them space to share their stories through a respectful, culturally sensitive and trauma-informed process.

**CFUW recommends that the Government of Canada immediately address the challenges faced by the Inquiry and:**

Work in close collaboration with the families of MMIWG, Indigenous communities and relevant stakeholders with the goal of empowering Indigenous women and families;

Build trust with the families and the communities through effective communication and outreach strategies, including hiring community outreach specialists and providing funding for onsite Indigenous organizations;

Continue to investigate the root causes of violence against Indigenous women and girls.

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<sup>i</sup> UN General Assembly. "Declaration on the Elimination of Violence against Women." United Nations, 20 December 1993, RES 48/104, Accessed October 4, 2017, <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>ii</sup> Violence against Women is defined in the 1993 Declaration on the Elimination of Violence against Women as "Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life." UN General Assembly, RES 48/104, 1993.

<sup>iii</sup> Beauré, Pascale. "Section 2: Intimate partner violence". Statistics Canada. November 30, 2015. Accessed October 4, 2017, <http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14114/section02-eng.htm>

<sup>iv</sup> Mulligan, Leah and al. "Homicide in Canada, 2015". Statistics Canada. November 23, 2016. Accessed October 4, 2017, <https://www.statcan.gc.ca/pub/85-002-x/2016001/article/14668-eng.htm>

<sup>v</sup> According to the latest General Social Survey (GSS) on victimization, more than 635,000 sexual assaults were reported by Canadians in 2014. Conroy, Shane, and Adam Cotter. "Self-reported sexual assault in Canada, 2014." Statistics Canada. July 11, 2017. Accessed October 4, 2017. <https://www.statcan.gc.ca/pub/85-002-x/2017001/article/14842-eng.htm>

<sup>vi</sup> Conroy, Shane and Adam Cotter, July 2017.

<sup>vii</sup> Canadian Federation of University Women (CFUW) and National Council of Women Canada (NCWC). "Joint Submission on the Occasion of Canada's Universal Periodic Review, 16<sup>th</sup> session (22 Apr-3 May 2013)." Canadian Federation of University Women. October 5, 2012. Accessed October 4, 2017, <http://www.fcdu.org/Portals/1/cfuwadminfiles/webfiles/advocacy/unitednations/universalperiodic/CFUW%20and%20NCWC%20Joint%20UPR%20Submission%20Final.pdf>

<sup>viii</sup> Government of Canada. "Strategy to Prevent and Address Gender-Based Violence." Status of Women Canada. July 7, 2017. Accessed October 4, 2017, <http://www.swc-cfc.gc.ca/violence/strategy-strategie/index-en.html>

<sup>ix</sup> Conroy, Shane and Adam Cotter, July 2017.

<sup>x</sup> Recent court decisions in Alberta, Nova Scotia and Newfoundland illustrate the lack of understanding of sexual assault law. Judge Deborah Paquette, Supreme Court of Newfoundland and Labrador in St. John's, downplayed strangulation and treated the perpetrator as the victim in a domestic violence case where the accused was sentenced to only a 14 days' house arrest. The cases are presented in the following articles: Burke, David. "Complaints about N.S. judge who said 'a drunk can consent' will be investigated". CBC News, Nova Scotia. September 7, 2017. Accessed October 4, 2017, <http://www.cbc.ca/news/canada/nova-scotia/judge-gregory-lenehan-drunk-sexual-assault-al-rawi-consent-1.4278905>

Fine, Sean. "Judge in 'knees together' trial resigns after council recommends he be fired." The Globe and Mail, March 9, 2017. Accessed October 4, 2017, <https://beta.theglobeandmail.com/news/national/judicial-council-recommends-justice-robin-camp-be-fired/article34249312/?ref=http://www.theglobeandmail.com&> CBC News. "RCMP officer found guilty of assault, acquitted on other charges." CBC News, Newfoundland and Labrador. November 2016, 2016. Accessed October 4, 2017, <http://www.cbc.ca/news/canada/newfoundland-labrador/cameron-lockhart-second-sentencing-rcmp-choking-1.4029193>

<sup>xi</sup> A short list of sources documenting non-State torture:

Canadian Centre for Child Protection. "Child Sexual Abuse Images on the Internet: A Cybertip.ca Analysis." The Canadian Center for Child Protection Inc. January 2016. Accessed October 4, 2017, [https://cybertip.ca/pdfs/CTIP\\_CSAResearchReport\\_Summary\\_2016\\_en.pdf](https://cybertip.ca/pdfs/CTIP_CSAResearchReport_Summary_2016_en.pdf)

Person against Non-State Torture. "Testimonies." Persons against NST. Accessed October 4, 2017, <http://nonstatetorture.org/~nonstate/research/victim-testimony>

Lane, Alexandra and Robert G. Holodak. "Brief to: The House of Commons Standing Committee on Justice and Human Rights In view of its study of Bill C-242 an Act to Amend the Criminal Code (Inflicting Torture), Submitted by Alexandra lane, Non-State Torture Victim." House of Commons. July 11, 2016. Accessed October 4, 2017, <http://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR8406577/br-external/LaneAlexandra-e.pdf>

Sarson, Jeanne and Linda MacDonald. "Torture victimization-Child to adult: Flashbacks and Connection with first responders, Part 1". *Sexual Assault Report*, 2012, 15(5), 65-66, 68, 72-74.

<sup>xii</sup> UN Committee against Torture (CAT), *Concluding observations of the Committee against Torture: Canada*, June 25, 2012, CAT/C/CAN/CO/6, Accessed October 4, 2017, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/6](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/6)

<sup>xiii</sup> Sarson, Jeanne and Linda MacDonald. "The Parallel Event: Using Law to Empower Women and Girls to Live Free from Violence in Work and Family." *Persons against NST*. March 20, 2017. Accessed October 4, 2017, <http://nonstatetorture.org/~nonstate/application/files/3714/9704/8750/cswpanel2017.pdf>

<sup>xiv</sup> Talaga, Tanya. "Families of murdered and missing women press inquiry to examine policing more closely." *TheStar.com*, July 28, 2017. Accessed October 4, 2017, <https://www.thestar.com/news/canada/2017/07/28/families-of-murdered-and-missing-women-press-inquiry-to-examine-policing-more-closely.html>

<sup>xv</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls. "Fact Sheet: What is the National Inquiry." June 27, 2017. Accessed October 4, 2017, <http://www.mmiwg-ffada.ca/en/resources/information-documents/>

<sup>xvi</sup> Native Women's Association of Canada. "NWAC Report Card: January 2017 – April 2017", NWAC, May, 2017. Accessed October 4, 2017, <https://www.nwac.ca/wp-content/uploads/2017/05/NWAC-Inquiry-Report-Card-May-2017-Final.pdf>

<sup>xvii</sup> Galloway, Gloria and Tu Thanh Ha. "Indigenous women's group pulls support from missing and murdered inquiry as commissioner resigns." *Globe and Mail*. July 11, 2017. Accessed October 4, 2017, <https://beta.theglobeandmail.com/news/politics/mmiw-commissioner-marilyn-poitras-resigns-in-another-blow-to-inquiry/article35653097/?ref=http://www.theglobeandmail.com&>

<sup>xviii</sup> NWAC, 2017.