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## End of mission statement by Dubravka Šimonović, United Nations Special Rapporteur on Violence against women, its causes and consequences - Official visit to Canada

Exhibit: *National Inquiry into Missing and  
Murdered Indigenous Women and Girls*

Location/Phase: Part III: Quebec City

Witness: Dalce Sambo Dorongh

Submitted by: Violet Ford,

Add'l info: Commission Counsel

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Ottawa, 23 April 2018: The UN Special Rapporteur on violence against women, its causes and consequences, issued the following statement today following her visit to Canada from 11 to 23 April 2018:

"Ladies and Gentlemen,

I would like to warmly thank the Government of Canada for inviting me to conduct this official visit and for its excellent cooperation before and during my stay. Canada has a long-standing record of support at the United Nations to issues related to violence against women and was the main sponsor of the resolution that established this mandate twenty three years ago. I would like to acknowledge that it has been a privilege to gather first-hand information on the situation of violence against women in Canada as the first country that has a feminist government, a feminist foreign policy and a feminist international assistance policy with clear focus on the promotion of the rights of women and girls.

This is the first visit to the country by the mandate of the Special Rapporteur on violence against women, its causes and consequences, and is focused on national challenges to protect women's rights and end gender-based violence in Canada.

During the last 13 days, I have had the opportunity to gather first-hand information on violence against women through visiting three out of the ten province level governments (Ontario, Quebec and Manitoba) as well as one territory government – Nunavut.

I had meetings at the federal level here in Ottawa with officials at the federal level from the Ministries on Status of Women Canada, Justice, Crown-Indigenous Relations and Northern Affairs, Employment, Families, Children and Social Development, Immigration, Refugees and Citizenship, Public Safety and Emergency Preparedness, Correctional Services, Canada Border Services Agency, National Defense and Global Affairs.

At the provincial level, in Toronto I held meetings with Ministers and authorities representing the government of Ontario, in Montreal with authorities from the government of Quebec and in Winnipeg with Ministers and authorities of the government of Manitoba; and finally, in Iqaluit I met with a Minister and government officials from the Territory of Nunavut, to whom all I would like to express my gratitude for all the information provided.

I also had the opportunity to meet with representatives of statutory human rights agencies such as the Canadian National Human Rights Commission, the Ontario Human Rights Commission and the Commission on the rights of the people and youth of Québec. Other independent institutions and advisory bodies with whom I met are: the Office of the Correctional Investigator, the Qullit Nunavut Status of Women Council, the Protector of the Citizen of Québec and the Council on the status of women of Québec.

I also held a video conference with the Chief Commissioner of the National Inquiry into Missing and Murdered Indigenous Women and Girls and with the staff of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec and a phone call with the Minister on the Status of Women.

During my visit, I had the opportunity to visit two women's correctional facilities the Nunavut Women's Correctional Centre in Iqaluit and the Women's Correctional Centre of Manitoba in Headingly; and I also spent a significant amount of time in visiting shelters for women fleeing of violence in each of the locations I visited.

I would like to thank in particular the women and girls who shared with me their personal stories placing their trust and some of their hopes in my hands, despite unique contextual complexities related to federal, provincial and territorial responsibilities in this area.

I believe that all the information I gathered allow me to provide today a preliminary assessment, and later a report on the manifestations, causes and consequences of violence against women and girls, in relation to systematic problems they face when it comes to their right to live a life free from violence and to gender inequality, in line with UN human rights instruments and standards accepted by Canada.



I will confine myself today to present only some preliminary findings which will be elaborated further in my final report that will contain a set of action-oriented recommendations which I will present at the UN Human Rights Council.

Throughout my visit to different federal, provincial and territorial jurisdictions, I have seen a variety of good initiatives and policies that could be flagged out as examples of good practices that could be replicated in other provinces and territories of Canada and at the global level.

I would like also to congratulate the Canadian Government on its current efforts of upgrading the Federal Agency on the Status of Women into a full-size department, which I see as an important step that will enable better coordination and alignment of laws and policies and better implementation of the legal framework in relation to the protection of women's rights and combating violence against women across the country, in order to fully integrate national feminist policy at all levels, Federal, Provincial and Territories, with the participation of all stakeholders, including indigenous women who today face intersectional discrimination and violence at a higher level than non-indigenous women, and therefore require specific attention and focus.

This development, together with the new Strategy to prevent and address Gender based violence, are important steps that are needed to respond to current challenges in the prevention of gender-based violence in Canada.

Violence against women in Canada is still a serious, pervasive and systematic problem: an unfinished business that requires urgent actions.

I am sharing with you today some preliminary findings in this regard:

1. Gaps in incorporation and implementation of the international human rights framework, including the CEDAW and other UN and regional treaties like the Belem do Para' Convention on violence against women (VAW) - which result in insufficient human rights based approach in laws on policies on preventing VAW and insufficient services for women and girls victims. There is a lack of specific federal law or model law on violence against women and domestic violence as well as a lack of a National Action plan on VAW and DV.

With respect to the international framework on women's rights I would like to call upon the Government to urgently accede the Belem do Para' Convention and to the Optional Protocol of the Convention against Torture (OP-CAT) and to align its national legal framework with those instruments.

#### **A) A Federal law on combating and preventing violence against women and domestic violence**

In 1981, Canada was one of the first countries to ratify the Convention on the Elimination of all forms of discrimination against women (CEDAW).

However, I would like to point out that the rights set out in the international human rights conventions like CEDAW are not directly applicable and are not fully incorporated into the national legal system. As a result, those rights are not legally enforceable or justiciable.

In Canada, law making authorities have adopted legislation that protect human rights; but overall, women's human rights in Canada are protected in an incomplete and patchwork way at the federal, provincial and territorial level that are in different level of harmonization with CEDAW, and thus result in different levels of protection for women's right to life free from violence. The Government should effectively and fully incorporate the CEDAW Convention at all levels of the national jurisdictions using women's human rights and CEDAW General Recommendation No. 35 on gender-based violence against women as a unifying benchmark for harmonization.

**There are already some national mechanisms that could be used in that respect.** I was made aware that for the first time in nearly thirty years, federal, provincial and territorial (FPT) ministers responsible for human rights met to discuss key priorities of FPT governments in relation to Canada's international human rights obligations.



This mechanism could be used for the monitoring and implementation of human rights obligations and recommendations at the FPT level with the participation of indigenous community. Federalism should not be a barrier to human rights implementation – including for the implementation of many recommendations from UN treaty bodies and the IACHR concerning women's rights and ongoing racial and gender discrimination of indigenous women.

In this regard, I call on the Government of Canada to move forward in establishing a solid and formal coordinating mechanism for **monitoring** the implementation of human rights obligations and recommendations arising from the international and regional human rights mechanisms in a coordinated, effective and transparent way, in which **independent human rights commissions**, civil society and indigenous representatives could participate.

In addition to specific focus on women's rights, such a high level human rights mechanism should include a gender perspective in its work and integrate all recommendations related to discrimination and violence against women.

One of the main issue of concern with regard to VAW is the lack of a national legal framework on violence against women and domestic violence based on women's international human rights law, as enshrined in the CEDAW and elaborated in detail in its General Recommendations No. 19 and No. 35 on gender-based violence against women.

Today, at the federal level, the Canadian criminal legislation is providing uniform norms on sexual assault, but there is no national agreed definition of **family and domestic violence applicable to all jurisdictions**. This result in varied policies and level of protection against domestic violence at the levels of provinces and territories. **Therefore, I recommend the Government to consider enacting a federal law on combating and preventing violence against women and domestic violence**. This law should be based on the CEDAW Convention, CEDAW General Recommendations No. 19 and No. 35 on gender-based violence against women and the Belem do Para Convention.

For example, I received information that protection orders in domestic violence cases are not issued in different parts of the country and are not always enforceable across all territories. It would be important to expand their application and to propose more relief opportunities for women. This could be done through the harmonization of the national legal framework on violence against women, including the recognition of protection orders from other provinces. **In any case, I recommend that the Government guarantees that protection orders are always available and enforceable across all territories and jurisdictions.**

Taking into consideration the lack of direct applicability and the lack of full incorporation of CEDAW, the lack of a national legal framework on violence against women and domestic violence as well as the complex federal system in which domestic violence services and intervention orders fall under the state and/or territory authority, improving cross-jurisdictional coherence is a matter of priority.

#### **B) National plan of action on VAW**

In June 2017, the federal government announced its Strategy to Address and Prevent Gender Based Violence as an important step to eliminate violence against women, which demonstrates political commitments and efforts in this field. The strategy is a first step in the right direction. However, it is very much policy and project oriented focusing on specific areas and it lacks an holistic legal framework with a clear elaboration of prevention measures, integrated services delivery and prosecution of perpetrators in a coordinated manner and guaranteed in all jurisdictions.

Canada should consider adopting a **national Action Plan on violence against women and domestic violence** and a separate NAP one on indigenous women that should be fully and comprehensively implemented at the federal, provincial and territorial levels, in order to ensure that women in all areas of the country have access to comparable levels of services and protection in line with international human right standards accepted by Canada. NAP is an implementation and measurement tool that should be based on comparable data collection. It could be a tool for the harmonization and implementation of laws and policies on gender based violence as well as for the provision of a consistent approach to prevention and responses services to VAW and domestic violence, including the effective provision of shelters, protection orders and help lines.

Let me also mention that while the federal government has jurisdiction over criminal law, the administration of justice is a provincial responsibility and there are specific challenges that should be addressed. In order to strengthen its framework on the **sexual assault and criminal justice system**, I would like to recommend that the federal government, in cooperation with provinces and territories, deploy the federal spending power to **improve criminal justice responses to survivors, including:**

- Providing free legal advice at the federal, provincial and territorial level,
- Receiving specialized sexual assault training for police officers and prosecutors that includes awareness about rape myths and information about the legal standard for consent and on the specific needs and vulnerabilities of indigenous women's, LGBTI2S, women's with disabilities and other vulnerable groups of women.

### C ) National Action Plan on indigenous women

The Government should also elaborate a separate national action plan on violence against indigenous women, First Nations, Inuit and Metis, using additionally to the CEDAW inquiry recommendations and other UN Treaty Bodies' specific recommendations on VAW against indigenous women's, the United Nations Declaration on the Rights of Indigenous Peoples which affirms that indigenous women should have ownership of, and administer, initiatives to improve their law and justice outcomes. Indigenous led programs and service delivery should be the norm and not the exception as it is currently the case.

I also recommend to adopt a holistic approach to consultation (as mandated by the United Nations Declaration on the Rights of Indigenous Peoples) with Indigenous women. This Action Plan should be indigenous led and supported by adequate resources, in particular ensuring the provision of a sufficient number of housing units, transitional houses and shelters, especially needed by Indigenous communities, that should be run by them and used for other services needed for recovery and empowerment, in line with the human rights based approach. NAP should also address specific challenges and provide more services for indigenous women in remote areas where victims face difficulties in accessing services.

### Data Collection

I would like to note that I have received some official general data on VAW but yet, there is a lack of comparable data on specific forms of violence and gender related killings of women's or **femicide**, which would be very much needed for evidence-based policy making. I also note that there are initial steps in some provinces for the establishment of observatories on VAW and femicides review panels, in line with my initiative for the establishment of Femicide watch or observatory.

In this regard, I encourage the Government to to establish homicide/femicide review panels or observatories / indigenous women's femicide observatory and/or establish or designate other bodies to do so, such as independent human right institutions, in close cooperation and participation of NGOs representatives, as recommended in my thematic report on this topic (A/71/378).

### Provision of shelters and adequate housing

During my visit, I noted with concern that the services providers and other interlocutors I met unanimously denounced the dire shortage of shelters for women and children escaping violence and a general lack of affordable public housing, including transitional housing and second stage accommodation and employment opportunities.

The extent of services available in urban areas is much greater than in rural areas and too often the services provided are limited to safe space without specific programs aiming at the empowerment of women. Additionally, just a small percentage serve women and children of indigenous communities and service providers are usually non indigenous women. Due to the lack of shelters or second-stage housing facilities, many women who have fled from domestic violence are subsequently forced to return to their homes exposing themselves to the risk of facing further violence.

With regard to the services that should be provided by shelters, including safety planning, counselling, children's programming, employment seeking assistance, I draw the Government's attention to the recommendations contained in my thematic report on human rights based approach to integrated service for victims of VAW with a focus on shelters and protection orders.



It is also important to provide sustainable funding for a sufficient number of safe and confidential shelters, allocated throughout the State's territory, including in rural areas, with adequate number of shelters provided to indigenous communities led by indigenous women and respecting cultural and language diversities. In addition, education programs, professional counselling and other services needed for recovery and empowerment, as well as second stage housing, should be provided within the context of a comprehensive strategy aimed at women survivors' empowerment and recovering, while protection orders should be applied to expel the perpetrator and not the victim when such possibilities exist.

**Trafficking is also a matter of concern in the country, particularly with regard to indigenous women and girls**, who are overrepresented as victims of human trafficking in Canada. There is a general lack of data on trafficking, including on trafficking for prostitution and other related purposes. I would like to request the Government to provide data in that respect. I have received information that trafficking is not fully addressed in the criminal code and that there is a pending legislation in this regard, which is particularly needed.

I have received reports on the widespread existence of cases of **sexual violence against women and girls in schools and on campuses**. According to the information received, young women between 15 and 25 years old attending an education facility are at high risk of experiencing sexual violence. Of all self-reported sexual assault in 2014, 41% were reported by students, 90% committed against women. Risk of sexual violence is particularly high for students who are Indigenous women, women with disabilities, and LGBTQIA2S students. On this matter, I recommend that the federal government ensures consistency in policy and legislation across all jurisdictions in order to promptly address sexual violence on campuses and in schools (including using federal spending power to hold institutions to account).

**Technologically-facilitated violence against women and girls is** an emerging and developing issue. On this matter, I acknowledge the creation of a new offence under the criminal code with regard to non-consensual distribution of intimate images as well as the adoption of similar provisions across territories such as Alberta and Manitoba. However, I recommend that the Government addresses those new forms of **violence against women and girls as a form of gender based violence interrelated with broader framework of discrimination and violence against women and girls**.

In this respect I have paid special attention to the situation of women who encounter multiple and intersecting forms of discrimination and violence and have strived to unpack the compounding effects these different forms of vulnerability have upon one and another and play out in the violence they experience.

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

It has been recognized by the Government that the basic inequities that exist between indigenous peoples and the rest of Canada are a glaring reminder of the failure to overcome systemic racism, to heal the intergenerational trauma resulting from colonialism and of the inadequate provision of basic specialized services and programmes for each of the communities.

Indigenous women from First Nations, Metis and Inuit communities are overtly disadvantaged within their societies and in the larger national scheme. Indigenous women face marginalization, exclusion and poverty because of institutional, systemic, multiple, intersecting forms of discrimination that has not been addressed adequately by the State.

Indigenous women have been discriminated historically even by the law; the Indian Act provided that First Nation women should not be given the same choice of status if they married men outside their communities and although this law prevailed for more than a century, reforms still fall short in providing equality to indigenous women and their descendants, which further results in the unequal access of benefits and services.

On several occasions, the CEDAW, the Human Rights Committee and the IACHR have recognized that sex discrimination in the Indian Act was a root cause for violence.



I would like to echo their recommendations and call for the urgent elimination of the legal provisions that discriminate against indigenous women in the Indian Act.

Throughout my visit, I was informed that the removal of children from indigenous families continues to be a persistent practice imbedded in the Canadian child welfare system. This harmful policy maintains and perpetuates the cycle of violence, with aboriginal women being made unable to break it and change it.

Universal access to social and community-based services and infrastructure should also be improved for all indigenous people and in particular for those leaving in rural and remote areas where access to safe and clean drinking water, education, health care facilities, adequate housing and employment represents a real challenge. In improving and providing these services, I would like to recommend that policies be made in consultation with the communities concerned and implemented by them. Budgets to cover indigenous affairs and policies should be designed based on a human rights approach and be increased.

I recognized that the Action Plan to Prevent Family Violence and Violent Crimes against Aboriginal Women and Girls (2015-2020) outlines concrete actions on prevention violence, support victims and protection of women and girls. However this plan lacks a holistic approach and does not address recommendations from the CEDAW Committee.

### **Inquiry on indigenous women**

In 2015, the CEDAW Committee adopted the Report on inquiry concerning Canada under its procedure established by the CEDAW Optional Protocol, in which it found that aboriginal women have been subjected to grave violations of human rights. The CEDAW recommended that the Government establishes a national public inquiry into cases of missing and murdered indigenous women and girls.

During my visit I was informed on the ongoing work of the National Inquiry which continues to collect many testimonies collected across the country and plans to hold expert hearings on 1) human rights framework, and 2) racism. The subjects of the institutional hearings are: 1) government services and 2) policing. The Inquiry has requested an extension of its mandate for an additional two years to finalize its work. This request is currently under the consideration.

The National Inquiry has been hearing the testimony of family members and survivors of violence for almost two years and I have heard from different sources that this was an important mourning and healing process, which opened up an important dialogue on the past racist and colonial policies. I have also heard concerns that this national inquiry has not been grounded on a human rights-based approach and that its terms of reference are not allowing for the investigation of cases.

Let me mention that during this visit, I became aware of the work of the Provincial Inquiry dealing with the investigation of misconduct and violence of police forces against Indigenous women in Quebec. The mandate of the inquiry includes investigating files and specific cases. I have also been made aware of a similar request for an inquiry in relation to the death of Tina Fountaine in Winnipeg. to the request included the need to examine the failure of the whole social child welfare and criminal justice system.

Both ongoing inquiries, National and Provincial ones, and the potential new one in the case of Tina Fountaine, demonstrate a need for an urgent action to address the root causes of ongoing instances of VAW against indigenous women and girls, taking aside the ongoing National inquiry.

It is important to note that the CEDAW adopted a set of recommendations on combating violence against aboriginal women, which include:

1. improving the social and economic situation of aboriginal women;
2. adopting a plan of action on vaw against Indigenous women.

The CEDAW inquiry addressed the long-lasting social and economic disadvantages and biases and racism in administration of justice, policing, data collection, jails and penitentiaries, social programs and services.

In addition to previously mentioned elements, I fully endorse CEDAW recommendations on substantive issues that should be elaborated in a National Action Plan on VAW for indigenous women. I also support the establishment of Monitoring Mechanisms developed in consultation with representatives of

indigenous women from all communities as well as the allocation of sufficient human and financial resources for its effective implementation. I further support the implementation of all measures identified in the Committee's recommendations, such as:

- Data collection on the status and VAW of indigenous women
- Police investigations and law-enforcement
- Police complaint mechanism with the establishment of independent civilian oversight bodies to oversight of the RCMP
- Trust building between police and aboriginal communities
- Over incarceration and over criminalization
- Culturally appropriate victim's services, shelters, second stage housing and housing
- Measure to improve the socioeconomic conditions of aboriginal women
- To address the disproportionately high number of aboriginal children institutionalized by Child welfare authorities which renders aboriginal women more vulnerable to violence as they are reluctant to seek help from authorities fearing that the children may be taken away
- To amend the Indian Act to eliminate provisions discriminating against women

This NAP should be based on the CEDAW and its General Recommendation No. 35 on gender-based violence against women. In addition, civil society organizations (Indigenous organizations and women's human rights organizations) should participate in the planning of actions, providing information, advise on design, and have a role in monitoring progresses.

#### **Over-incarceration of indigenous women**

The overrepresentation of indigenous women in correctional populations is well-known. Indigenous people (First Nations, Métis and Inuit) comprise 3.8% of the Canadian population but now account for 23.2% of the total inmate population. Between 2001-2002 and 2011-2012, the incarcerated Indigenous population has increased by 37.3%, while incarcerated Indigenous women have increased by 109%. Indigenous women offenders comprise 33% of the total inmate population under federal jurisdiction.

I would like to recommend a thorough examination and revision of the current application of legal provisions in relation to the incarceration of indigenous women and that the existing legal provisions, such as sections 81 and 84 of the of the Corrections and Conditional Release Act, be applied consistently. The Government should also take concrete steps to eliminate the overrepresentation of Indigenous Peoples in custody over the upcoming decade and to issue detailed annual reports that monitor and evaluate progress in doing so, in particular the manner it implements Call to Action #30 of the Truth and Reconciliation Commission of Canada.

During the visits I conducted to correctional facilities, I was deeply concerned about their overcrowding. In addition, both of the facilities visited have not currently in place any child and mother program. Mental health issues in prison is another serious concern that has capture my attention. In fact, rates of mental disorder among women offenders are particularly high and half of the women in custody have a mental disorder in combination with anti-personality disorder. I consider that incarceration as an alternative to hospitals for those women with mental health issues is inadequate and not in compliance with international human rights standards. I urge the Government to give preference, in every case, to alternatives to imprisonment for prisoners with disabling mental health by utilizing the provision to transfer prisoners to mental health services, facilities or psychiatric hospitals, pursuant to existing and/or potential exchange of services agreements between the federal and provincial and territorial health authorities.

In the context of women' incarceration, I would also like to refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which provides guidance for women in prison. In compliance with the above mentioned rules, I would like to call for an absolute ban on solitary confinement, segregation, intensive psychiatric care, medical observation and all other related forms of isolation of incarcerated young women and women with mental health issues.



As a matter of priority, the Government should establish programs to address the needs of women in prison and increase rehabilitation and reintegration programmes, in consultation with women's groups and individuals with expertise working with women with a view to determining how to reduce the numbers of women, particularly racialized women, women with disabling mental health issues in prisons and addressing the needs and community integration requirements of federally sentenced women.

I welcome the positive steps that the Government is taking in relation to the current consultations with provincial and territorial governments in view of the forthcoming accession of the State to the Optional Protocol to the UN Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). This instrument foresees national and international oversight for prisons and other facilities where people are deprived of liberty and will undoubtedly bring improvements to conditions of detentions.

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

In the light of the most recent concluding observations to the State Party under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of People with Disabilities (CRPD) and the International Covenant on Economic Social and Cultural Rights (CESCR), I am concerned about incidences of violence against women and girls with disabilities in Canada. Furthermore, based on the information received and the shelters I visited, services for assistance and home support or adapted transportation lack accessibility for disabled women. Even though all relevant federal and provincial legislation already prohibits violence against persons with disabilities, the legislative process has not been successful in the prevention or reduction of violence. Therefore, the Government should fully align its policies with the recommendations made by the international human rights mechanisms and provide a comprehensive assessment of the situation of girls and women with disabilities in the country, in order to establish a baseline of disaggregated data against which future progress towards the implementation of international human rights standards could be assessed.

#### **Violence against women's asylum seekers and refugees and migrant women**

I would like first to acknowledge Canada's longstanding policy in welcoming immigrants to the country.

However, during my visit, I have become aware that certain immigration and refugee policies create vulnerability to female migrants with precarious immigration status. Of particular concern is the ability of migrants and refugees who are experiencing violence to access a separate permit permission and available services and assistance, including legal aid. I would like to recommend the Government adopts measures that will facilitate the process of regularization of migrant status based on humanitarian and GBVAW ground in line with CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

I would also like to recommend the Government stops the practice of detaining children and pregnant women in irregular situation indefinitely and to implement alternatives to detention, such as community release and supervision or tracking mechanisms. An independent oversight mechanism to monitor the Canada Border Services Agency (CBSA) and its detention policies should be put in place to deal with complaints of violence and abuse towards women in detention.

Thank you!

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1/ Indigenous women make up 4% of Canada's population and roughly 50% of trafficking victims  
[http://www.canadianwomen.org/sites/canadianwomen.org/files//CWF-TraffickingReport-Auto%20%281%29\\_0.pdf](http://www.canadianwomen.org/sites/canadianwomen.org/files//CWF-TraffickingReport-Auto%20%281%29_0.pdf)

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