

MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS IN CANADA
GENDER, INDIGENEITY, AND GENOCIDE

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Abstract

This paper aims to examine what role the intersection of marginalized identities plays in the determination of, and public conception of, a genocide. This is done through an analysis of the issue of Missing and Murdered Indigenous Women and Girls in Canada, an issue which has risen to the forefront of the Indigenous rights movement in the country and has resulted in a three-year National Inquiry on the subject, whose final report was published last year and gained media attention for its conclusion of a genocide against Indigenous peoples in Canada. In its analysis, this paper aims to consider how the creation of certain categories, notably ‘Indigenous’ and ‘women and girls,’ contributes to the eventual genocidal conclusion of the National Inquiry. To do so, this paper investigates the relationships between genocide, gender, and indigeneity; the historical and legal definitions of genocide and how they are applied in the situation of Missing and Murdered Indigenous Women and Girls in Canada; as well as the methods of the National Inquiry in collecting its evidence. Taking a post-colonial perspective and acknowledging the historical treatment of Indigenous peoples (particularly women), as well the difficulties of counting and recognizing victims and victimhood, this paper aims to consider how a feminicide can function both as part of a larger act of genocide, and as genocide in itself.

Acknowledgements

As persons of European descent, despite our dedication to using a decolonized approach in informing our work, we acknowledge that our understanding of Indigenous issues is inherently limited and distinct from that of an Indigenous person. Where possible, we sought to include Indigenous perspectives, but we acknowledge that structures rooted in colonialism have impacted the presence, or lack thereof, of Indigenous-led academia and research. We further acknowledge that in many ways, some of the terminology used throughout this paper can be considered controversial and reductive – such as the terms ‘indigeneity’ and ‘Indian.’ To the best of our ability, we endeavored to rely on language supported by Indigenous research and advocacy and contextualized our usage of historically harmful phrasings within discussion of colonial structures.

We would like to acknowledge and thank Commissioner Michèle Audette and our second interviewee, whose identity is confidential, for their participation and the knowledge they shared with us, which was pivotal to our efforts of deconstructing and analyzing the ways in which gender, indigeneity, and genocide intersect.

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Glossary

Aboriginal: refers to the first people to live on a particular territory/country, prior to the arrival of any settlers or colonists. As this applies to Canada, “aboriginal” refers to the first peoples of present-day Canada, which includes First Nations, Inuit, and Métis peoples. This term entered popular usage following 1982, as Section 35 of the Canadian Constitution uses it as such.

Femicide: a sex-based hate crime, defined as the intentional killing of women and/or girls because of their gender.

Feminicide: related to femicide, but inherently political in nature, as it references the impunity, silence, and indifference on the part of the state and judicial system that contribute to the normalization of misogyny and violence against women.

First Nations: used to describe Aboriginal peoples of Canada who are neither ethnically Inuit or Métis. This term effectively replaced the term “Indian” in the 1970s and 1980s. However, unlike “Indian”, First Nations does not have any legal definition. “First Nations” refers to the ethnicity of the sum of First Nations people, compared to “First Nation,” which can refer to a specific band, reserve-based community, or larger tribal grouping and the status Indians who live among them.

Indigenous: broad term used to refer to peoples with long histories and connections to specific lands and/or territories, who have been adversely affected by displacement, largely stemming from settlement of their traditional territories by other peoples. In this paper, we capitalize Indigenous as a sign of respect, as “indigenous”, much like “native” carries negative connotations.

Inuit: refers to specific groups of people native to the far northern provinces. They are not considered “Indians” under Canadian law.

Métis: refers to a collective of cultures and ethnic identities resulting from inter-marriage between Europeans and Indigenous peoples in present-day Canada.

List of Acronyms

CPIC	Canadian Police Information Centre
FDRP	Forensic Document Review Project
GBV	Gender-based violence
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for Yugoslavia
ILC	International Law Commission
IWG	Indigenous women, girls, and 2SLGBTQQA people
MMIWG	Missing and Murdered Indigenous Women and Girls
NWAC	Native Women’s Association of Canada
RCAP	Royal Commission on Aboriginal Peoples

RCMP	Royal Canadian Mounted Police
SWIA	Saskatchewan Indian Women's Association
QNW	Quebec Native Women Association
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNHRC	United Nations Human Rights Committee
2SLGBTQQA	Two-Spirit, Lesbian, Gay, Bisexual, Transgender, queer, questioning, intersex, and asexual

Introduction

Indigenous women, girls, and 2SLGBTQQIA people (IWG) in Canada have long been the targets of violence as the result of underlying factors including poverty, homelessness, racism, sexism, and colonial legacy. In Canada, IWG are between 3 and 3.5 times more likely to be the victims of violent crimes, in comparison to Canadian women of other ethnicities.¹ The severity of these crimes cannot be underestimated. Until the establishment of the National Centre for Missing Persons and Unidentified Remains (NCMPUR) in 2010, Canada did not maintain a database for missing people, which made it extraordinarily difficult to determine the murder and missing rates for IWG as well as compare the data to other populations.² Between 1980 and 2012, IWG represented 16% of all female homicides in Canada despite comprising only 4% of the female population. This number increased to 24% in 2015.³ The Conservative government under Prime Minister Stephen Harper paid little attention to the issue, rejecting calls from Indigenous communities for a national inquiry into murdered and missing Indigenous women and girls (MMIWG), arguing that the problem stemmed from within the Indigenous community and that the Canadian government was engaging in broad public safety and justice measures to tackle the problem.⁴

In 2015, following the election of the new Liberal government headed by Justin Trudeau, Canada announced that it would conduct a national inquiry into missing Indigenous women and girls. In 2016, the National Inquiry into MMIWG (the National Inquiry) was officially established with the broad objective of uncovering the processes feeding the issue of MMIWG. According to a former governmental employee interviewed in the context of this paper, this milestone was the result of the combination of long-lasting advocacy by Indigenous communities for state action on the question of MMIWG through this type of inquiry, going back at least as far back as the 1980s, and of a “genuine desire to try and find a way forward in the country that [embodied] reconciliation.”⁵ Arguably, the Trudeau administration saw

¹ Shannon Brennan, “Violent victimization of Aboriginal women in the Canadian provinces, 2009,” *Statistics Canada*, November 30, 2015, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2011001/article/11439-eng.htm#a1>.

² Niagara Falls Review, “Missing persons by the numbers,” *Niagara Falls Review*, January 11, 2017, <https://www.niagarafallsreview.ca/news-story/8192454-missing-persons-by-the-numbers/>.

³ Government of Canada, “Background on the inquiry,” April 22, 2016, <https://www.rcaanc-cirnac.gc.ca/eng/1449240606362/1534528865114>.

⁴ Gloria Galloway, “70 per cent of murdered aboriginal women killed by indigenous men: RCMP,” *The Globe and Mail*, April 9, 2015, <https://www.theglobeandmail.com/news/politics/70-per-cent-of-murdered-aboriginal-women-killed-by-indigenous-men-rcmp-confirms/article23868927/>.

⁵ Interview with a person whose identity is confidential, May 2, 2020. Transcription located in Annex IV.

in the National Inquiry an opportunity to lay the first building block for state action on the issue of MMIWG, as well as an occasion to fulfill a campaign promise.⁶

To provide more details, the National Inquiry was established as independent from the Canadian government, headed by five commissioners who were appointed to oversee the process. It was tasked with reporting on (i) the systematic causes of violence against IWG in Canada, which included the cultural, social, economic, historical, and institutional causes contributing to their ongoing violence and vulnerability; and (ii) institutional policies and practices initiated in response to the violence experienced by IWG, which included those processes that had been effective in reducing violence.⁷ The National Inquiry sought to center the experiences of both families and survivors affected most by this violence. To do so, it proceeded through its Truth Gathering Process, a three-part procedure aimed at collecting testimonies in a gender-sensitive and trauma-informed manner.

The first part of the Truth Gathering Process centered around gathering testimony from family members and survivors of violence who were invited to share their truths publicly and/or privately. The second and third parts centered around institutional hearings that looked into the systemic causes of institutionalized violence and expert and knowledge keeper hearings, where, *inter alia*, Elders, academics, legal experts, front-line workers, and specialists spoke about their recommendations and solutions.⁸ Following the Truth Gathering Process, in its final part, the National Inquiry made 231 ‘Calls for Justice,’ or recommendations for action.⁹ Hearings were held between April 2017 and October 2018, with over 2,380 people participating.¹⁰ The commissioners wrote and submitted their Final Report to the Canadian government in April 2019, for publication in June 2019. One of the key successes of the National Inquiry was its ability to foster testimony, which created a momentum enabling thousands of people to break the silence regarding violence faced by IWG in Canada. However, the Inquiry was limited by a short 2.5-year time frame, as well as by strict federal government rules and procedures which did not lend themselves naturally to public inquiries of this kind.¹¹

⁶ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III

⁷ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (2019), 5. See the full Terms of Reference in Annex I.

⁸ National Inquiry, *Executive Summary*, 6.

⁹ Parties with Standing are groups with a direct interest in the issue of violence against IWG that applied for additional rights to participate in the Inquiry process. They include NGOs, Indigenous women’s organizations, civil society groups, governments, and police agencies.

¹⁰ National Inquiry, *Executive Summary*, 1.

¹¹ National Inquiry, *Executive Summary*, 8.

Ultimately, the National Inquiry arrived at the conclusion that, based on the Truth Gathering Process carried out during the hearings, the violence experienced by IWG is tantamount to race-based genocide that particularly targets women and girls.¹² This thunderous claim

This paper will therefore examine the key and intersecting concepts of genocide, gender, and indigeneity, which have reciprocally contributed to the marginalization and violence faced by all Indigenous peoples in Canada, especially IWG, in order to ultimately reconcile evidence of femicide against IWG with the National Inquiry's broader finding of genocide. Firstly, the historical, legal, and social processes that contributed to the MMIWG category are examined, namely how the settler Canadian government used categorization and definition of Indigenous identity in their nation-building process. Various policies, including the 1876 Indian Act, enabled the Canadian government to control territory and Indigenous peoples by creating the concepts of Indian status. Forced assimilation policies, such as the residential schools, served to further disappear Indigenous customs and introduced a forced dependence on the colonial government. This colonial violence impacted IWG specifically, as it introduced a gender imbalance within the formerly egalitarian Indigenous peoples and targeted women in its delegation of the "status Indian" category. This colonial violence and process of categorization have contributed to the internalized misogyny and the normalization of marginalization and violence against IWG.

In a second time, this paper looks at how patterns of violence against Indigenous peoples in Canada, and IWG specifically, were identified. Historically, there was a general lack of information regarding violence against IWG, largely due to a lack of will to collect it. Although statistical data on violence against IWG has been collected from 2010 onwards, its use has been manipulated by politicians as an excuse to ignore this issue, arguing that this was a self-imposed, internal problem plaguing Indigenous communities in Canada. This is largely why the National Inquiry chose to move away from a strictly quantitative approach and used a qualitative one that centered around testimony from Indigenous communities as a way to discuss, challenge, and heal from historical and contemporary violence. This section also examines the patterns of gender-based violence (GBV) found by the National Inquiry, taking a gender-based approach to genocide, especially at the way IWG have been weaponized by the settler polity toward genocide of Indigenous peoples in Canada.

Lastly, in its final section, this paper addresses how and why the National Inquiry demonstrated genocide. Beginning with a discussion of the legal definition of genocide, the narrative is shifted to address the

¹² National Inquiry, *Executive Summary*, 5.

wider, sociological value of ‘genocide’ as a term, notably through the introduction of the concept of ‘social death,’ a notion that is relatively new within genocide discourse and which, in short, proposes that genocidal destruction corresponds to an individual’s loss of their ‘social vitality,’ leaving them socially dead, unable to connect through social bonds to other members of their community. Then, in-depth analyses of the respective relationships between gender and genocide and indigeneity and genocide are carried out, unravelling the post-legal ways in which these three intersectional concepts interplay with one another. Finally, the ways in which the above assessment is applicable to the work and findings of the National Inquiry are addressed, by highlighting its legal analysis of genocide and its value in allowing for the recognition of the disproportionate, colonially-imposed suffering of IWG, before concluding.

I. MMIWG: creating a category

The first part of this paper aims to explore the historical, legal and social processes that have led to the emergence of the MMIWG category. ‘Categorization’ is defined as the process of differentiation of a group within society and is an essential human process that renders the complexity of our social world manageable for our perception. As categorization typically operates through an external identification – the identification of the Other by a classifier – the emergence of categories is often deeply intertwined with power, resource allocation (both material and non-material), and the production of knowledge. If categories do not necessarily imply self-recognition, they have an impact on the internally perceived identity of a group. In addition to the internalization of the category by the group, the normative effect of categories, which often translates into very direct consequences, either wanted or unwanted, plays a central role in the self-definition of a group’s identity, especially when framed in institutional settings. In this regard, understanding the emergence of the categorization of MMIWG is a key element in understanding the systemic implication of the framing of Indigenous identity across Canada, especially considering to the National Inquiry’s conclusion of genocide and the importance of the definition of a ‘protected group,’ as will be later discussed in Part III.

A. Categorization and definition of Indigenous identity in the creation of the nation-state

Shaping power relations through a definition

The creation and definition of Indigenous identity in Canada is closely related to the colonial process through which the Canadian nation-state emerged, and the related challenges to control its land and Native population. From the moment Britain claimed most of present-day Canadian territory following its victory against the French in 1763, the question of regulating its relationship with Indigenous Nations living on these territories was central in the settler government’s attempt to exert authority over the land and secure access to its resources. As the settler population grew and began to wish for independence from the Crown, their policy toward Indigenous peoples shifted from a ‘nation-to-nation’ relationship to a more coercive one which operated within a broader nation-building process. In 1850, colonial authorities passed legislation that led to the creation of Indian reserves, thus acknowledging the *de facto* authority of settlers over the land by restricting the “Indian” population to specific territories, simultaneously defining who could be considered part of this population.¹³ Multiple acts were adopted, inducing the gradual deprivation of native peoples’ land in favor of white settlers. In his work on the

13 James R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989).

“indigenization” of settler communities, Lorenzo Veracini argues that the settler polity is guided by a need to transform a historical tie – i.e. “we came here” – into a natural one – i.e. “the land made us”.¹⁴ In this way, settler colonialism is framed around the principle of transfer, both the transfer out of Indigenous peoples via their marginalization and displacement, and the transfer in of settlers as the accepted dominant society and culture¹⁵, a process in which the categorization of indigeneity has played a central role.

The Indian Act was adopted in 1876 and is still in force today. Although some of its stricter colonial measures have been scrapped, it is particularly enlightening regarding the close link established between State control over land and its definition of Indigenous identity. The Indian Act, while regulating the life of Indigenous peoples, provides a very precise legal definition of Indigenous identity through the establishment of the legal category of “status Indian”. This legal category recognizes a historic nation-to-nation relationship between Indigenous peoples and Canada for those able to prove a relationship to individuals holding Indian status through the male line. This policy allowed the government to consistently remove Indigenous people from their land and their communities, as “non-status Indians” were denied access to Indian reserves in an attempt to assimilate them to colonial society. It has been estimated that between 1876 and 1989, the Indian Act rendered two thirds of the total Indigenous population landless, as there are now twice the population of “non-status Indians”, compared to Métis and “status Indians”.¹⁶

It is notable that all officially recognized groups of Indigenous peoples, namely First Nations, Métis¹⁷, and Inuit¹⁸, are the result of these coercive regulations and stem as much from claimed cultural difference as from the different strategies developed by each group to somehow maintain land rights. Bonita Lawrence argues in this regard that the recognition of Métis as a distinct nationhood and culture is a direct reaction to the discriminatory legislation under which their denomination as “half-breed” would have excluded them from Indian status and related land rights.¹⁹

14 Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Houndsmills: Palgrave MacMillan, 2010), 21-22.

15 Veracini, 33.

16 Joan Holmes, *Bill C-3-equality or disparity? The effects of the new Indian Act on Native Women*. Background paper, Canadian Advisory Council on the Status of Women, 1987.

17 Special responsibility for Métis and Non-Status Indians has been largely denied until 2016, when the Supreme Court ruled unanimously that the legal definition of “Indian” includes Métis and Non-Status Indians.

18 Inuit as a group were barely acknowledged until the 1940s.

19 Bonita Lawrence, “Gender, Race and the Regulation of Native Identity in Canada and the United States: An Overview,” *Hypatia* 18, no. 2, (2003): 11.

It should be noted that not only did the creation of these legal categories impact Indigenous peoples' enjoyment of rights, but also produced ways of thinking that deeply shaped the current definition of Indigenous identity and the power relations between Indigenous Nations and the federal state. These categories erased the complex and diverse mosaic of Nations that make up Indigenous identity to consolidate them under one racialized category: "Indian". This denial is all the more violent because it stems from European settlers' external categorization of "Indigenous." Within the colonial structure, Indigenous people are unified by the fact that they are "Others," and therefore marginalized and subjected to the definition and perception crafted by the dominant colonial government. In sum, the colonial settler government constructed the concept of indigeneity in contrast to itself, framing Indigenous peoples in Canada as a social "Other." For Jason Chalmers, indigeneity and genocide are therefore not separate, but rather related concepts that intersect to reinforce common state reason: it is only after this identity had been fully constructed, accepted and internalized, that the state could perpetuate genocide against the Indigenous other, because of its otherness.²⁰ The rigid categorization of "Europeans" and "Natives" has played a crucial role in maintaining colonial control, as emphasizing a racial difference between "white superiority" and "Native inferiority" reinforced the ability of the newly-formed Canadian state to exert paternalistic control over Indigenous people.²¹ Furthermore, as the primary producer of rules and knowledge, the colonial government asserted its authority to determine group identity and authenticity within Euro-Canadian society, which crystallized its dominant power relation with Indigenous peoples.²²

Forced assimilation and the Indigenous category

In most of the post-confederation period (1867–1914), the goal of "Aboriginal" policies has been to assimilate Indigenous people. This assimilation was designed to foster the disappearance of Indigenous customs and practices to merge with the dominant European society. The Gradual Civilization Act, adopted in 1857, clearly stated the Canadian government's objective to fully absorb Indigenous people into colonial society by erasing their specificity. Subsequent policies have implemented a wide range of mechanisms that used legal, social, and educational tools in order to forcibly integrate Indigenous people.

²⁰ Jason Chalmers, "A Genocide that Precedes Genocide: Reconciling "genocide" and "indigeneity" with a paradox of otherness," *AlterNative*, 12, no. 2 (2016): 181.

²¹ Ann Stoler, "Carnal knowledge and imperial power: Gender, race and morality in colonial Asia," in *Gender at the crossroads: Feminist anthropology in the post-modern era*, ed. Micaela di Leonardo (Berkeley: University of California Press, 1991).

²² James Clifford, *The Predicament of Culture: Twentieth Century Ethnography, Literature and Art* (Cambridge: Harvard University Press, 1988).

At the core of this assimilation policy, we find again the definition of the Indigenous category and the bestowing of its rights.

The Indian Act reinforced assimilation by dissolving the structures of Indigenous society, thus creating a forced dependence on the colonial government. The main measures included: 1) the abolition of Indigenous peoples' independent and self-governed status; 2) the regulation of band membership; 3) the abolition of traditional political systems to impose an election system controlled at the federal level; 4) the ban of Indigenous spiritual customs; and 5) the creation of residential and industrial schools administered by religious clergy, along with mandatory attendance for Indigenous children. By creating the legal category of "status Indian," the settler government created the fallacy of an Indigenous person who was no longer legally Indigenous, the offspring of whom were considered white. This artificial dissolution of Indigenous rights and social structures through the Indian Act therefore played a key role to push forward "enfranchisement."²³

Enfranchisement was the most common legal process through which Indigenous people would, voluntarily or not, give up on their legal Indian status. The idea of voluntary enfranchisement has been a cornerstone of Aboriginal policies, which have displayed it as a positive step within the nation-building process. Patrick Wolfe's argument is instructive, as he posits that settler colonialism is founded on the logic of Indigenous elimination, as often this serves as a pretext for the genocidal erasure of Indigenous peoples by governments who replace them with settlers.²⁴ However, most of enfranchisement processes concerned Indigenous women who would automatically lose their Indian Status when marrying non-Indigenous men, under section 12(1)(b) of the Indian Act. Ultimately a forced assimilation process, enfranchisement remained in force until the adoption of Bill C-31 in 1985, which removed section 12(1)(b), the idea of enfranchisement, and provided individual bands with the right to set up their own conditions for membership.²⁵

Impact on the self-definition of Indigenous identity

The grammar created through the categorization of "status Indians" and "non-status Indians" has embedded their self-definition in a system of power based on class, gender, and race that is difficult to

²³ Bennett Mccardle, "Enfranchisement," *The Canadian Encyclopedia*, September 25, 2014, <https://www.thecanadianencyclopedia.ca/article/enfranchisement>.

²⁴ Patrick Wolfe, "Settler Colonialism and the elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006): 387-409.

²⁵ Bennett Mccardle, "Enfranchisement," *The Canadian Encyclopedia*, September 25, 2014, <https://www.thecanadianencyclopedia.ca/article/enfranchisement>.

overcome. The self-definition of “Indianness” has been built in reaction to these categorizations and their consequences. The contemporary perception of Indigenous identity has to be grasped through the lens of the normalization and internalization of these regimes by groups.²⁶ Indigenous identity is therefore always negotiated in relation with discourse produced by dominant colonial and Western structures. The evolution of legislation, regulation, but also recognition and research on the matter, thus play an essential role in generating Indigenous identity within ever-changing frames.

Today, the definition of Indigenous identity remains deeply linked to the Indian Act and the definition of “status Indian”, as has been shown by the fierce resistance by Indigenous communities following the publication of the 1969 White Paper, proposing to remove the Indian status²⁷, or following the divisions created by the adoption of Bill C-31 in 1985, which allowed the reintegration of “mixed-blood” children and enfranchised Indigenous women within communities. A principal fear was that any “opening-up” would diminish the distinctiveness of what defines Indigenous identity, even if that distinction resulted from the discriminatory provisions of an imposed legal category.²⁸

B. Colonial violence and its effect on women

The European bureaucratic system established by settler governments superseded traditional Indigenous ways of identifying their sense of self in relation to both their land and their communities, effectively naturalizing Western, colonial worldviews. Replacing traditional structures of governance and identification with new colonial ones had a very direct impact on the Indigenous population as a whole, creating imbalance and dependencies within Indigenous communities. However, very specific assimilation policies deployed by the settler government, namely the Indian Act and residential schools, had a long-lasting discriminatory effect on Indigenous women in particular.

Creating imbalance in gender relations

Historically, Indigenous communities in Canada were mostly egalitarian, with women being advisors, respected community members and sometimes even in governing positions. Although different Nations had their own organization regarding gender roles, maintaining gender equality was essential for survival. Most of pre-contact Indigenous societies were matriarchies, which did not advocate women as subordinate to men, regardless of whether they were European or Indigenous. Within Indigenous

²⁶ Bonita Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States: An overview,” *Hypatia* 18, no. 2 (2003): 3-31.

²⁷ Lawrence, 13.

²⁸ *Ibid*, 11.

cultures, women derived their power and status from their femininity, which included their roles as life-givers.²⁹

Colonial regulations deeply disrupted traditional structure and imposed a gendered imbalance that had not necessarily previously existed in Indigenous communities. In regard to the traditional significance and power of women Indigenous societies, it is not surprising that colonial rules primarily targeted them through the imposition of limiting regulations and structural norms, as part of a broader attempt to hinder Indigenous governance to enforce control on both people and land.³⁰ Settler governments thus replaced traditional structures with a male-dominated hierarchical system found in the European, Christian settler polity, which favored men and treated women as subservient, limiting their access to roles in governance within their community. Commissioner Michèle Audette pointed to the imposition of colonial, paternal systems as the primary cause in dismantling the foundations between Indigenous communities and members of those communities. This was a dismantling not only of the equality between men and women in pre-colonial Indigenous communities, but also of the relationship between Indigenous peoples and the land:

Colonial violence is the first cause in undoing our legal foundations between Natives, which are respect, reciprocity, and interdependence, which as I told you was between men and women, but also with nature, the environment, animals, everything that feeds and heals us, and makes us live. There is an interdependence, always, always.

*Alors longue réponse pour vous dire que la violence coloniale va être la première, première cause qui va ensuite venir défaire nos fondements de loi entre autochtones qui sont le respect, la réciprocité et l'interdépendance, qui, comme je vous ai dit, est entre les hommes et les femmes mais aussi avec la nature, l'environnement, les animaux, tout ce qui nous nourrit, nous guérit et nous fait vivre. Il y a une interdépendance, tout le temps, tout le temps.*³¹

Jesuit missionaries were highly complicit in this act, giving Indigenous men authority and social standing within their communities and minimizing women's independence³², imposing domestic roles upon them and normalizing the idea of women as men's property³³, and participating in the upending of family

²⁹Marie Ralstin-Lewis, "The Continuing Struggle against Genocide: Indigenous Women's Reproductive Rights," *WicazoSa Review*, 20, no. 1 (2005): 73.

³⁰Ralstin-Lewis, 71.

³¹Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

³²Cora Voyageur, "Contemporary Aboriginal Women in Canada," in *Visions of the Heart: Canadian Aboriginal Issues*, eds. D. Long and O.P. Dickason (Toronto: Harcourt Canada, 2000), 82.

³³Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York: Zed Books Ltd, 2002).

structures, child rearing practices, political and spiritual life, and work and social activities. Residential schools, to which attendance was made compulsory following an amendment to the Indian Act in 1884, played a key role in embedding the patriarchal system within Indigenous societies. Their curricula were centered around sewing, cooking, and homemaking, focusing on training women in domestic skills.³⁴ The rationale of assimilation behind these schools was to turn Indigenous women into the ideal European woman and also sought to teach them how to promote “civilization” amongst Indigenous males. This approach was highly paternalistic in nature, and promoted the idea that Indigenous women were inferior to men: a combination of racism and sexism that resulted in the creation of persisting inequalities for Indigenous women, when compared to white women or even Indigenous men.³⁵

The Canadian government enhanced the assimilation process using racist ideology. The government declared that Indigenous people were by nature unclean and inferior, requiring residential schools to save their children from the “insalubrious influences of home life on reserve,” with school officials informing students that “cultural alienation was to be welcomed as a first step toward healthful living and long life.”³⁶ The Indian Act was amended in 1920 so that it was now illegal for Indigenous children to stay home from school, forcing parents to send their children to residential schools. At these schools, they were punished for speaking their native language, practicing their cultural and spiritual traditions, and were often the victims of sexual abuse. The effects of this violent practice cannot be underestimated—it left generations of Indigenous parents without parenting skills, self-esteem, feelings of hopelessness about the future, and shame regarding their identity.³⁷

Although the residential schools have closed³⁸, this is not the end of Eurocentric education of Indigenous students, as this ideology continues to dominate the Canadian education system.

Today, Indigenous women continue to face the highest levels of poverty and violence rates throughout Canada. Already discriminated through the colonial stereotyping of the Indigenous population within mainstream society, they find themselves doubly marginalized as women within their own community.

³⁴ Erica Neeganagwedgin, “A critical review of Aboriginal education in Canada: Eurocentric dominance impact and everyday denial,” *International Journal of Inclusive Education* 17, no. 1 (2013): 21.

³⁵ Marika Morris et al, *Women’s experience of racism: How gender and race interact* (Ottawa: Canadian Research Institute for the Advancement of Women (CRIAOW), 2002), 4. <https://www.criaw-icref.ca/en/product/womens-experience-of-racism-how-race-and-gender-interact>

³⁶ Mary-Ellen Kelm, *Colonizing Bodies: Aboriginal Health and Healing in British Columbia 1900-1950* (Vancouver: UBC Press, 2001), 57.

³⁷ CRIAOW, 4.

³⁸ The last residential school closed its door in 1996.

This discriminatory colonial system has been deeply internalized over centuries of patriarchal values and practices, and the impact of this gendered imbalance still has serious consequences on IWG.

Women in the regulation of “status Indians”

The regulation and assimilation policies of the “status Indian” population under the Indian Act has been a key vehicle by which the settler government was able to introduce gender imbalances within Indigenous societies. In its provisions, the Indian Act introduced gendered policies as a key aspect of its assimilation policy, especially via its regulation of transmitting of Indigenous identity on the basis of marriage. It is also worth noting, as Lawrence does, that the first white settlers in Canada were displaced and marginal white men, who used integration via intermarriage within Indigenous communities to further both their success in trade as well as their survival.³⁹ Many of the first colonial settlements in Canada were founded upon alliances made with Indigenous communities, strengthened by marriage and reliance upon Indigenous women for continued survival and prosperity. Although during early European settlement in Canada, the definitions of who was considered European or Indigenous were ambiguous,⁴⁰ colonial structures have consolidated themselves to establish a strict distinction between White and Indian identity.⁴¹

As mentioned previously, the Indian Act has maintained control over the Native identity in Canada via the creation of a legal “Indian” category, which has historically been the sole category by which an Indigenous person can be recognized by the government. Historically, individuals could only be granted this status if they could prove that they were related to individuals who were already themselves status Indians through the male line.⁴² This strict definition allowed the Canadian government greater control, namely in its ability to make Indigenous-born women and their children legally white. This specific structure not only hinders the role of Indigenous woman as transmitters of culture within their communities, but also, as argued by Lawrence, lowered the power of newly-Canadian Indigenous women, rendering them marginal within their own communities and effectively forcing them to abandon

³⁹ Bonita Lawrence, “Gender, Race and the Regulation of Native Identity in Canada and the United States: An Overview,” *Hypatia* 18, no. 2, (2003): 25.

⁴⁰ Olive Patricia Dickason, “From ‘one nation’ in the northeast to ‘new nation’ in the northwest: A look at the emergence of the Metis,” in *The New Peoples: Being and Becoming Metis in North America*, eds. Jacqueline Peterson and Jennifer S.H. Brown (Winnipeg: University of Manitoba Press, 1985), 28.

⁴¹ Lawrence, 9.

⁴² James R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989), 114.

their own communities.⁴³ On the other side of that gendered equation, the Indian Act gave Indian status to white women of European origin who married status Indians, despite lacking any Indigenous heritage, as they were perceived as “stepping outside” of the “social boundaries of whiteness.”⁴⁴ This practice endured until 1985. In its promotion of gender and racial domination, the specific way that the Indian Act structured inter-racial marriage significantly contributed to the creation of systemic racism and sexism toward and within Indigenous communities in Canada.

The cultural effects of this “social engineering,” to which Indigenous women were particularly vulnerable, led to over 25,000 Indians losing status between 1876 and 1985, forcing them to leave their communities⁴⁵. It must be noted that the basis of this entire policy was in the gender discrimination within the Indian Act. For every woman who lost her status and had to leave her community, all of her subsequent descendants were equally deprived of their status, permanently disconnecting and alienating them from Native culture and society in Canada. The loss of status for Indigenous women contributed to the large and unfathomable levels of demographic and cultural loss over the better part of a century, the effects of which are still felt today within Indigenous communities throughout Canada. In this way, cultural genocide rooted in gender discrimination quickly becomes colossal in its scope.

Indigenous women and lateral violence

This colonial violence and categorization have been both deeply internalized and normalized, which has created long lasting effects within Indigenous communities. The century-long legal gender discrimination of the Indian Act has normalized the fact that Indigenous women will lose their status if they marry outside of Indigenous communities. Even the idea of who can be considered as mixed race is defined by gender. The by-product of this is the mistreatment of individuals with Indigenous mothers and white fathers, who are often Othered and/or discriminated from outside and within Indigenous contexts. Children of white mothers and Indigenous fathers are often considered “status Indians” and are allowed to remain within their communities. However, those children of white fathers or Métis fathers and Indigenous mothers are usually forced to become “urban Indians,” seen as outsiders within Indigenous communities, who view them as “not being Indian” due to their mixed heritage and urban-

⁴³ Joan Holmes, *Bill C-3—equality or disparity? The effects of the new Indian Act on Native women*, Background Paper, Canadian Advisory Council on the Status of Women (1987), 8.

⁴⁴ Lawrence, 9.

⁴⁵ Joan Holmes, *Bill C-3—equality or disparity? The effects of the new Indian Act on Native Women*. Background paper, Canadian Advisory Council on the Status of Women, 1987.

area upbringings.⁴⁶ Thus, not only has gender been a determinant in who is allowed to remain within Indigenous communities, but also in who is labelled and externalized from these communities as mixed race. The ways the Indian Act defined who is considered Indigenous or mixed race, and who has access to Indigenous land, have been further exacerbated by protectionist attitudes regarding the preservation of Indigenous culture on reserves, who see outsiders as a threat to community identity.

One such case of this was expressed by Commissioner Audette, who is herself the child of an Indigenous mother and a white Québécois father. Growing up in the 1970s and 1980s, she found that she was rejected and/or “othered” by both the Indigenous community, as her mother married a white man and lost her Indian status, and the majority white Québécois community, who viewed her as exotic. By her account, this meant that:

...we would always live on the margins of Innu society because we were rejected, and with the Québécois in Montréal, we would have a situation where they would think that I was Latino, Lebanese, or someone from a Latin American country and when they discovered that was, as we said at the time, “Indian,” I became exotic. According to the Indigenous community, we were sold as savages, not good, our own world rejected us and the Montréalais would say, “hey, I have an Indian in my class at school.”

... on va vivre toujours en marge de la société Innu parce qu'on est rejetés, et du côté des Québécois à Montréal on va vivre une situation où on va penser que je suis une latino, une libanaise, ou quelqu'un qui vient des pays d'Amérique latine. Et aussitôt qu'on découvre que je suis, comme on disait à l'époque, 'indienne,' là, je deviens exotique. Alors du côté des autochtones, on est des 'vendus,' des 'sauvages,' des 'pas bons,' notre propre monde nous rejette. Et du côté montréalais, c'est comme " 'Ayoye,' j'ai vu une Indienne dans ma cour d'école. ”⁴⁷

Furthermore, although GBV is faced by women regardless of age, ethnicity, or class, the enduring legacy of negative colonial stereotypes has contributed to the unique ways this sort of violence has affected IWG in Canada. European settlers popularized the image of Indigenous women as sexually promiscuous and subservient, which continue to be perpetuated by Canadian media today. This has led to the *de facto* justification of sexual violence against IWG and has contributed to further internalization of colonial stereotypes.⁴⁸ In some ways, this has manifested as the lateral violence found within Indigenous communities today, which is seen as an intergenerational learned pattern and contributes to the distinct

⁴⁶ Bonita Lawrence, “Gender, Race and the Regulation of Native Identity in Canada and the United States: An Overview,” *Hypatia* 18, no. 2, (2003): 15.

⁴⁷ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

⁴⁸ Wendee Kubik, Carrie Bourassa, and Mary Hampton, “Stolen Sisters, Second Class Citizens, Poor Health: The Legacy of Colonization in Canada,” *Humanity & Society* 33 (2009): 26.

ways in which IWG's rights to culture, health, security, and justice are violated or forgotten, as mentioned by the National Inquiry.⁴⁹ This was why the Inquiry targeted IWG specifically.

Commissioner Audette described the ways in which colonial violence and genocide contributed to the destruction and diminishment of not only the Indigenous way of life, but especially of Indigenous women's power, role, and agency. She states:

... We have a system that comes to destabilize, a state that fed this from century to century, but also in our own communities, when I spoke of normalization or [the fact that] there we experience violence, not only physical violence but also violence in all its forms, lateral, spiritual violence and all that, where our own members will make women not a priority and no longer have their place in the decision-making system or governance. We make believe that. [However], look at the statistics, [as] they are striking—very few women leaders, very few women at the head of organizations, at the head of a community or a nation. Unless it affects the social aspect, education, health, social services, that is normal, even among Quebecers, but in the context of economic development, women in positions that we have given to men for a long time, or it was taken for granted that it [power] was for men, it is much more difficult. So that means that there are women who will say “I am discriminated against at home, and I am discriminated outside, so the investigation must remain only for the Indigenous women.”

... on a un système qui vient déstabiliser, un État qui va nourrir ça de siècle en siècle, mais aussi dans nos propres communautés. Quand je parlais de normalisation où, là aussi, on va vivre une violence, pas seulement une violence physique mais aussi une violence sous toutes ses formes, une violence latérale, spirituelle et tout ça, où nos propres membres vont faire que les femmes ne sont pas une priorité et n'ont plus leur place dans le système décisionnel ou la gouvernance. On fait croire que, mais regardons les statistiques, elles sont frappantes : très peu de femmes chefs, très peu de femmes à la tête d'organisations, à la tête d'une communauté ou d'une Nation. À moins que ça ne touche l'aspect social, l'éducation, la santé, les services sociaux, ça c'est normal, même chez les Québécoises. Mais dans le cadre du développement économique, des femmes dans des positions qu'on a donné longtemps aux hommes, ou on a pris pour acquis que c'était pour les hommes, c'est beaucoup plus difficile. Alors ça fait qu'il y a des femmes qui vont dire “je suis discriminée chez nous, et je suis discriminée à l'extérieur, donc l'enquête doit rester seulement pour les femmes autochtones.”⁵⁰

C. The crystallization of Indigenous issues around MMIWG

The role of Indigenous women's movements

⁴⁹ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (2019), 30.

⁵⁰ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

The particular violence and discrimination lived by Indigenous women in the colonial context, and outlined above, has long been recognized within Indigenous communities. Among broader Indigenous activism, numerous women's rights organizations emerged within communities across Canada. Still insufficiently documented, these Indigenous movements have been identified by recent studies as one of the roots of the first wave of feminism in Canada in the late 19th century.⁵¹ In the 1970s, many women's organizations emerged at grassroots, provincial, and federal levels, such as the Saskatchewan Indian Women's Association (SIWA), the Native Women's Association of Canada (NWAC), or the Quebec Native Women Association (QNW). In the early age of Indigenous women's organizations, their aim was primarily to support and improve the life of women and children at the community level.⁵²

However, their advocacy work quickly expanded to denounce the discriminatory measures of section 12(1)(b) and was widely mediatized through campaigns, marches, actions in court, and controversies, culminating in the adoption of Bill C-31 in 1985. Multiple court cases filed against Canada, such as the *AG v. Lavell*, *R v. Bédard*, and *Lovelace v. Canada*, claiming that the gender-discriminatory nature of section 12(1)(b) of the Indian Act was a violation of the 1960 *Canadian Bill of Rights*⁵³, led the UN Human Rights Committee (UNHRC) to consider the question. Ruling that the section constituted a violation of the International Covenant on Civil and Political Rights (ICCPR),⁵⁴ the UNHRC brought both national and international public attention to Canada's human rights record, especially toward Indigenous peoples. These cases were a turning point in the mobilization of civil society toward women's rights issues and supported the development of Indigenous feminism in the 1990s.

During the 2000s, Indigenous women's organizations, along with international human rights organizations such as Amnesty International,⁵⁵ regularly raised the issue of disappearances of IWG and benefited at the time from both public and political resonance under the Liberal government. Under the office of Stephen Harper (Conservative, 2006-2015), however, the openness of the government to receive and fund research to tackle the issue plummeted. Civil society responded with an increased mobilization to urge governmental response, launching very mediatized campaigns such as the REDress project (2010)

⁵¹ Jean Barman, "Indigenous Women and Feminism on the Cusp of Contact," in *Indigenous Women, and Feminism: Politics, Activism, Culture*, eds. Cheryl Zuzack et al. (Vancouver: University of British Columbia Press, 2010), 93.

⁵² Janet Silman, *Enough is Enough: Aboriginal Women Speak Out* (Toronto: Canadian Scholars' Press, 1987).

⁵³ Amanda Robinson, "Lavell case," *The Canadian Encyclopedia*, April 10, 2017, <https://www.thecanadianencyclopedia.ca/en/article/lavell-case>.

⁵⁴ *Sandra Lovelace v. Canada*, Communication No. 24/1977 (30 July 1981), U.N. Doc. CCPR/C/13/D/24/1977 (Views under Article 5 (4) of the Optional Protocol).

⁵⁵ Amnesty International, "No more Stolen sisters," 2006, <https://www.amnesty.ca/our-work/campaigns/no-more-stolen-sisters>.

or the *Walking With Our Sisters* awareness.⁵⁶ The public attention given to the MMIWG issue, which was aggregated with general discontentment toward the ruling government, turned the question of state responsibility toward Indigenous peoples into a key aspect of the 2015 campaign. The reasons leading to the emergence of the National Inquiry therefore seem to emerge from the conjunction of both civil society pressure and political opportunity. Commissioner Audette, who had also presided over the Quebec Native Women Association (QNW) and the Association of Canada (NWAC), recalls:

I found this period very dark, when the discourse started to change to say it was not a systemic issue, that it was a problem police could solve. “You are the aggressor after all, you are the rapists, so solve your problems yourself, it’s not my concern,” [...] It provoked a lot of rage among militants [...] So the issue became very politicized, and movement were so organized, women were so powerful, so they went on the streets. They did marches, they were thousands to demonstrate, they crossed Canada relentlessly during 9 years to go to Ottawa. They went to the United Nations, they went to the Inter-American Organization, they went everywhere to sign petitions, and it became so powerful that all political parties, over the 2015 campaign, promised they would set an inquiry during the first 100 days of their office, notably the liberals.

Moi je l’ai trouvée noire en tout cas, cette période-là, où le discours va commencer à changer pour dire que c’est pas un problème systémique, mais un problème que les policiers vont régler. Puis c’est ‘vous autres’ les agresseurs, c’est ‘vous autres’ les violeurs, puis réglez vos affaires entre ‘vous autres’ là, puis moi j’ai pas ce problème-là. (...) ça vient avec beaucoup de rage chez les militants et militantes. (...) Alors ça s’est tellement politisé, les mouvements sont tellement organisés, les femmes sont puissantes, elles sont allées dans les rues, elles ont fait des marches, elles ont fait des manifestations par milliers, elles ont traversé le Canada neuf ans de suite pour aller à Ottawa sans arrêt, sont allées aux Nations Unies, à l’Organisation des États Américains, vont être partout à faire des pétitions... Et ça devient tellement puissant comme manifestation que tous les partis politique en 2015, lors de la campagne électorale, et surtout les Libéraux, vont en faire une promesse que s’ils deviennent le nouveau gouvernement, dans les 100 premiers jours, ils vont mettre en place une enquête.⁵⁷

MMIWG, inclusiveness and controversies

Exploring the specific issue of MMIWG has not only been the result of the identification of this category by their overrepresentation, but also the result of the crystallization of the discourse around this particular question. In this regard, it is necessary to analyze what this focus entailed, notably for the National Inquiry, and how it influenced the creation and understanding of Indigenous identity.

⁵⁶ Samira Samamo, “Unsettling Spaces: Grassroots Responses to Canada’s Missing and Murdered Indigenous Women During the Harper Government Years,” *Comparative American Studies*, 14, no. 3-4 (2016): 204-220.

⁵⁷ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

Since the first call to launch the National Inquiry on MMIWG from the government under newly-elected Prime Minister Justin Trudeau, Indigenous communities have raised concerns over the decision to restrict the research to the issue of MMIWG, pointing to the lack of inclusiveness of such an approach. The argument was that missing and murdered Indigenous men and boys also face a higher risk of being victimized⁵⁸ and, apart from gendered violence and sexism, are subjected to similar colonial patterns as IWG. In the view of these critics, the restrictive angle of MMIWG hinders the National Inquiry's capacity to grasp the full picture of the patterns of violence present among Indigenous communities. Multiple calls were made for the Inquiry to at least adopt a more holistic approach that would include testimonies from Indigenous men and boys as well, which would have been relevant to the National Inquiry's overall mandate of examining systemic causes of violence. However, these calls were largely rejected⁵⁹.

It has been argued that one of the underlying reasons behind restricting the inquiry to MMIWG was the persistence of negative gendered and racialized stereotypes against Indigenous men, perceived as violent offenders, criminals or drug and alcohol abusers.⁶⁰ Similar stereotypes were already present under Harper's rationale in office to clear out Canada's responsibility, pointing to Indigenous men as the principal perpetrators of violence against IWG. Despite their experience of similar patterns of colonial violence, Indigenous men are thus still mostly perceived as abusers of IWG.⁶¹ In general, MMIWG, as a category, better corresponds to the profile of a 'pure victim,' not only subjected to crime but also discriminated against within the justice system.⁶² It could be argued that focusing solely on IWG would reinforce such stereotypes, rather than community-building and healing. Finally, it can also be argued that the scope of the National Inquiry, while allowing an emphasis on the national colonial patterns that led to violence against IWG, takes the risk to 'essentialize' the specific situation experienced by women of various communities under one monolithic MMIWG category.

In response to these critics, it has been underlined that the National Inquiry was a highly politicized matter and was expected to provide results before the next electoral campaign, which took place in 2019.

⁵⁸ Zoran Miladinovic and Leah Mulligan, *Homicide in Canada, 2014* (Ottawa: Statistics Canada, 2015).

⁵⁹ John G. Hansen and Emeka E. Dim, "Canada's Missing and Murdered Indigenous People and the Imperative for a More Inclusive Perspective," *International Indigenous Policy Journal*, 10, no. 1 (2019): 1-18.

⁶⁰ Elizabeth Comack, *Racialized Policing: Aboriginal People's Encounters with the Police* (Blackwood Point, Nova Scotia: Fernwood Pub, 2012).

⁶¹ Jane Dickson-Gilmore and Carol LaPrairie, *Will the Circle Be Unbroken? Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (Toronto: University of Toronto Press, 2005).

⁶² Larry J. Siegel and Christopher Ray McCormick, *Criminology in Canada: Theories, Patterns, and Typologies* (Scarborough, ON: Nelson Education, 2012).

Due to this very short timeframe, and the national scope of the National Inquiry, the focal point of the inquiry had to be precisely framed. Questioned on the matter, Commissioner Audette highlighted that the choice of analyzing violence only through the lens of MMIWG was a difficult but essential step to seize the unique political opportunity to conduct such research:

If it had been up to me, I believe Canada should have had the courage to lead a [general] inquiry on disappearances, with very specific working groups on what the phenomenon is for Indigenous women, and what the phenomenon is for indigenous men, in order to define “calls”—or “recommendation” to use the commission’s vocabulary—to be sure that our recommendation would be appropriate for both men and women. It has been very politicized, extremely politicized, especially during the pre-inquiry. So, for the government it was difficult to say “ok, let’s include men as well,” for many reasons that I will disapprove, but so it is.

Si ça n’avait été que moi, je pense que le Canada aurait dû avoir le courage de faire une enquête sur les disparitions, mais avec, on s’entend, avec des cellules bien précises sur ce qu’est le phénomène pour les femmes autochtones et ce qu’est le phénomène chez les hommes autochtones pour arriver avec des appels, ou on pourrait dire des recommandations, pour reprendre le terme général de la Commission, pour être sûrs que nos recommandations vont être appropriées pour les femmes et pour les hommes. Ça a été très politisé, extrêmement politisé, comme enjeux cette enquête-là, l’“avant enquête”. Donc pour le gouvernement, c’était difficile pour eux de dire “Ok on va aussi ajouter les hommes,” pour une multitude de raisons que je vais désapprouver, mais ça c’est comme ça.⁶³

⁶³ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

II. Identifying patterns of violence

A. Challenging numbers

The use of statistics to identify patterns of violence against Indigenous peoples in Canada – and particularly against IWG – has been fraught with difficulties throughout the country’s history – the first such difficulty being the lack of general will to collect such data in the first place. For example, in a 2014 report, the Royal Canadian Mounted Police (RCMP) noted that “Aboriginal origin is a recent addition to the ethnicity field in [the Canadian Police Information Centre (CPIC)] database.”⁶⁴ This impacted the accuracy of the RCMP’s research, as the lack of a specific category meant that they used the more general, and therefore less precise, categories of “non-white” and “blank” to narrow their search, as the “Aboriginal” designation only appeared in 2011, while the period investigated spanned from 1980-2012.

Additionally, until 2010, there was no nationally accessible database of missing persons in Canada at all, which rendered it difficult to coordinate between local jurisdictions when necessary, and to collect any sort of complete dataset disaggregated by gender and ethnicity or race.⁶⁵ In its Forensic Document Review Project (FDRP), the National Inquiry, also identified several instances of non-identification of Indian status, noting that, as of 2013, “half of all police forces, including the RCMP, do not report on the Indigenous identity of homicide victims” to Statistics Canada’s Canadian Centre for Justice Statistics’ annual Homicide Survey.⁶⁶ This is problematic on its face, but especially so when it is considered that a portion of the data in the RCMP’s 2014 report is derived from the results of the Homicide Survey.

When disaggregated data collection does occur, it is likely to be mired with caveats. Some issues related to this collection are specific to the situation of IWG, while others, such as under-reporting to law enforcement, are phenomena common to many crimes. However, under-reporting of violence against IWG has precipitants uniquely linked to indigeneity. For example, victims or their families might be reluctant to speak to police due to a history of violence and neglect on the part of law enforcement toward Indigenous people and communities. There are also demonstrated issues with the identification of victims’ Indigenous ethnicity or status. The Indian Act still provides a rigid legal framework that can exclude those of Indigenous descent who identify/identified as such but were not considered so under

⁶⁴ Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview* (2014), 19.

⁶⁵ Niagara Falls Review, “Missing Persons by the Numbers,” *Niagara Falls Review*, January 11, 2017, <https://www.niagarafallsreview.ca/news-story/8192454-missing-persons-by-the-numbers/>.

⁶⁶ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, Volume 1b* (2019), 247.

the law.⁶⁷ But perhaps an even greater problem with regard to the determination of Indigenous identity is the police procedure for doing so. In its 2014 report, the RCMP admitted to officers often having to make a subjective visual judgment about someone's race or Indigenous identity. In their own words, this practice is questionable, stating: "Asking a police officer to judge a person's race based on his or her perception is difficult and can yield incomplete or inaccurate results. What a person looks like does not always reflect how s/he would self-identify."⁶⁸ In addition, the practice of having a – usually white – police officer visually categorize an Indigenous person's identity reenacts colonial systems of differentiation by essentialization. The issues enumerated above, among others, led the FDRP to conclude in the National Inquiry's Final Report that there is "no reliable estimate of the numbers of missing and murdered Indigenous women, girls, and 2SLGBTQIA persons in Canada."⁶⁹

Additionally, when considering any officially collected figures, we must also examine the relationship between the collection of such information and the very existence of the state. For example, proportional representation in democracies depends entirely upon official population estimates. "Statistics," a German-coined word with a Latin etymology, makes "specific reference to the public domain, as a 'science dealing with the facts of a state.'"⁷⁰ Historian Stuart Woolf explains that in the 19th and 20th centuries, during the transition to the modern state, "statistics, from the choice of the field of enquiry to the conceptual classification of the questionnaires and the re-elaboration of data, was indelibly marked with imprint of authority."⁷¹ The choice of what to collect data on and what methods to use to do so is ultimately the purview of the state. This is put in stark relief when considered in the context of colonial settler states, in which such decisions are routinely taken with little to no consultation with those under study, and with an ignorance of Indigenous cultures—both of which can have a significant impact on the results of statistical collection. To rely on official statistics about violence against marginalized groups when the state itself has been an agent of violence against these same groups is in many ways inconsistent with the goal of value-neutral data, though these official statistics are often the only available source of data.

⁶⁷ Viian O'Donnell, and Susan Wallace, *First Nations, Métis, and Inuit Women* (Ottawa: Statistics Canada, 2011), 10.

⁶⁸ Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview* (2014), 21.

⁶⁹ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, Volume 1b* (2019), 233.

⁷⁰ Stuart Woolf, "Statistics and the Modern State," *Comparative Studies in Society and History* 31, no. 3 (1989): 590.

⁷¹ Woolf, 599.

Understanding this idea is particularly helpful in examining the methodology of the National Inquiry. In addition to its critiques of existing government statistics in the FDRP, the purely qualitative methods used by the Commission function almost as a rebuke of the concept of statistical data collection on the MMIWG issue in Canada. A system that has previously been used as a tool of management and control of Indigenous people is one that is perhaps inappropriate for gathering information from the same population. In combination with this is the issue of the Commission's level of independence; while it was in theory completely independent, it was still set up by the state and received both government funding and oversight. Commissioner Audette affirmed that "it was not 100% independent, not at all," mentioning as an example the difficulty the Commission had in creating certain positions to correspond to particular circumstances and issues experienced by Indigenous people and communities, due to the wide variety of cultures and situations.⁷² While Commissioner Audette also expressed that the lack of a quantitative element was largely due to a lack of funds, it is instructive that when presented with a choice, the Commission decided to direct its focus on community and expert hearings as sources of evidence.⁷³

Finally, it is important to address how statistics can be dangerous when presented outside their proper context. Such figures can be, and have been in the past, manipulated and used to build false narratives for political expediency and other purposes. Commissioner Audette provided one such example in her interview, when she discussed the position of former Prime Minister Stephen Harper's Conservative government. It put emphasis on the fact that much of the violence was perpetrated within communities, which allowed the government to frame the issue of violence against IWG as a problem of policing, and not as a systemic violation of human rights; in Audette's words: "Playing with statistics can be interesting for those who want to push a certain agenda."⁷⁴ The summary of the FDRP, discussed above, also engages with this point, attempting to address the misuse and even fabrication of statistics in regard to the perpetrators of violence against IWG. Specifically, it asserts that "the oft-cited statistic that Indigenous men are responsible for 70% of murders of Indigenous women and girls is not factually based."⁷⁵ It explains that after the 2014 RCMP report, the Harper government's Minister of Aboriginal Affairs publicly blamed Indigenous men for the majority of homicides against IWG, despite there being no reference to the offenders' ethnicities in the report. The minister later used the 70% figure in a meeting

⁷² Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

⁷³ For more on these methods, see the next section.

⁷⁴ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

⁷⁵ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, Volume 1b* (2019), 233.

with Indigenous chiefs, again despite no mention of this statistic in the report. The figure itself may or may not be accurate, but at the moment there is no way of knowing.

With these limitations in mind, it is perhaps useful to examine other methods with a more qualitative slant, including those ultimately used in the work of the National Inquiry.

B. The Inquiry: A qualitative and trauma-informed platform

Considering the challenges imposed by both the timeframe and budget, early on in the process of constructing their methodology, Inquiry commissioners moved away from a formal quantitative approach. Their qualitative and flexible approach centered on communities, revolving around gathering testimonial evidences from families, experts, and survivors across Canada. The resulting general structure was split into three kinds of hearings:

- Community hearings and statement gathering, in which the testimonies of 1,484 survivors and families of victims were heard over 15 events held across all Canadian provinces and territories.⁷⁶
- Institutional hearings, which aimed at gathering details on policies and practice from government service providers, health authorities, and grassroots and community organizations. In total, 6 institutional hearings were conducted.⁷⁷
- Knowledge Keepers and Expert hearings, in which Elders, Knowledge Keepers, academics, legal experts, front-line workers, young people, and specialists gave testimonies and were consulted on different topics such as Indigenous laws, decolonizing perspectives, human rights, racism, international law, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Seven hearings were conducted in Nunavut, Newfoundland, Quebec, Ontario and Manitoba.⁷⁸

Innovative approaches

In designing the methodology, the commissioners aimed to efficiently gather information as well as provide the Indigenous community with a comprehensive and adapted space to discuss, challenge and heal from past and present violence. The Inquiry methodology has therefore sought to break away from

⁷⁶ Canada, National Inquiry into Missing and Murdered Women and Girls, *Reclaiming Power and Peace: Executive Summary of the Final Report* (2019), 12.

⁷⁷ Ibid.

⁷⁸ Details on the different hearings are available here: <https://www.mmiwg-ffada.ca/interactive-map-hearings-and-events/>.

institutional approaches to make the information-gathering process as valuable as possible for the Indigenous communities.

The qualitative approach, revolving around testimonies, has in this regard proven to be more compatible with the Indigenous modes of governance and oral transmission. Specifically, oral transmission plays a key role in the sharing of history, heritage and healing for most Indigenous communities. During community hearings, the Inquiry therefore put aside the traditional “tribunal-like” setting to promote an environment closer to the sharing circles and other places of dialogue and exchange of Indigenous Nations, which also allowed an innovative way of collecting evidence, including through sharing objects or artistic contributions.⁷⁹ Due to the very specific context of the Canadian colonial system, which has typically sought to deprive Indigenous women from their political voice, having the ability to orally express their experiences in a culturally appropriate context has been seen as an important source of empowerment for survivors. This method also tends to lend itself to the provision of more valuable testimonies, as it helps women to go beyond the idea of testifying for an institution that has systematically discriminated against them. Finally, it must be noted that all community hearings were conducted only following invitation on the communities and never imposed on the witnesses, as the rationale was not to collect evidence exhaustively, but rather to promote the witnesses’ choice to share their stories. Michèle Audette, who is herself of Innu heritage and strongly advocated for this innovative methodology underlined the importance of this approach:

Yes, oral tradition has always been part of our modes of governance. Independently of which indigenous nation, transmission is always oral. We did not write back then; we didn’t have the technology! So, speaking became something important that we have to honor. Colonialism, the impact that this violence had on indigenous people, especially women, led us to fear speaking up. But this voice, that we will gain back with time, is an impressive means of healing.

Oui, depuis toujours, de façon naturelle, la parole fait partie de nos modes de gouvernance. Peu importe le monde chez les peuples autochtones, la tradition orale va toujours être celle qui va transmettre. On écrivait pas à l’époque, on avait pas la technologie! Donc parler va être quelque chose d’important et que l’on doit honorer. Le colonialisme, l’impact que cette violence-là a eu sur les peuples autochtones et surtout les femmes, va nous amener à avoir peur de cette prise de parole. Mais cette parole qu’on va reprendre au fil du temps est un vecteur de guérison hallucinant.⁸⁰

Geographical challenges

⁷⁹ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

⁸⁰ Interview with Michèle Audette, 28 April, 2020. Transcription (in French) located in Annex III.

Given the immensity of the Canadian territory and the limited time provided to conduct the Inquiry, the selection of hearing locations and participants played an important role in the methodology design. Commissioner Audette commented that in a movement to break with the usual grammar of institutional inquiries, it was important for commissioners start with communities, as opposed to beginning in urban areas as normal. Therefore, the first community hearings were held in the Yukon. However, the largest participant turnout occurred at hearings in urban areas. This shed light of one of the issues of the inquiry—namely, the impossibility of pursuing a detailed report for each province, which would have provided the inquiry with more specific and context-dependent information and an analysis of provincial legal standards. This point is considered as one of the major losses of the Inquiry, as it would have not only shown the diversity of problems faced under each federal context, but also avoid falling into the depiction of a “universal” Indigenous experience. With the exception of Québec, the report thus could not fully capture the diversity of Indigenous experiences caused by the violence of the dominant colonial structures.

C. Patterns of gender-based violence (GBV): The National Inquiry’s findings

The National Inquiry found evidence of genocide toward Indigenous peoples by the past and present Canadian governments. However, its findings pointed to the ways that this genocide specifically targeted and affected IWG, given their historical roles in pre-contact Canada. The National Inquiry found this to be a root cause of the violence experienced by this group, especially in light of the high prevalence of MMIWG in Canada and the government’s lack of political will to appropriately and effectively address this issue.

A gender-based approach to genocide

When does the killing of women become a feminicide and how is this interwoven with genocide? Feminicide is distinctly different from femicide, which Diana Russell defines as the killing of females by males purely due to their gender.⁸¹ Russell further elaborates, arguing that femicide functions to reinforce gender roles and male dominance whilst rendering women profoundly unsafe.⁸² In comparison to femicide, feminicide is inherently political, as it holds both the male perpetrators and the state and judicial structures responsible for normalizing misogyny and violence against women. Impunity, silence, and indifference to this violence and misogyny contribute to this process. In this way, feminicide

⁸¹ Diana Russell, “The Politics of Femicide,” in *Femicide in Global Perspective*, eds. Diana Russell and Roberta Harmes (New York: Teachers College Columbia University Press, 2001).

⁸² Russell, 177.

articulates the social character of the murder of a woman as the product of the unequal power relations between men and women.⁸³ It also provides a way to critically examine legal, social, and political analyses regarding how institutions and society respond to this, implicating the state as responsible, whether this is by commission, neglect, or toleration.⁸⁴

The National Inquiry's investigations into the violence faced by IWG found the Canadian state's toleration, omission, and general indifference toward this violence, which disproportionately affects this community, to be evidence of genocide. However, one could argue that this is also evidence of femicide, given the gendered way that settlers, the Canadian government, and its institutions targeted Indigenous women in their efforts to gain control over Indigenous resources and land. The violence that was introduced into these communities has had lasting, intergenerational effects that have adversely affected women, which includes their high rates of disappearance and murder in comparison to European-origin Canadians. As Marcela Lagarde stated in her research regarding femicide in Ciudad Juárez in Mexico, femicide occurs when state authorities, such as the Canadian government, do not carry out their duties to prevent and punish the murder of women, which creates an environment of impunity that further perpetuates and normalizes this behavior and violence toward IWG in Canada.⁸⁵

The GBV and femicide findings of the National Inquiry are embedded within its findings of colonial genocide. As elucidated in earlier discussions regarding the effects of colonial violence against IWG, colonial settler governments targeted women in their quest to dispossess Indigenous peoples of their lands and resources, which included subjecting them to external control, forced assimilation, and extermination.⁸⁶ European explorers began this process in the 16th century, using the idea of *terra nullius* and the Doctrine of Discovery in order to classify Indigenous peoples as "savages" and justify their claims to Indigenous land. Christian missionaries aided in this process by challenging and eventually upending the egalitarian roles of gender within Indigenous communities. For the National Inquiry, the "long history of gendered colonial encounter" demonstrated by European settlers, Christian missionaries, the Indian Act, residential schools, the Sixties Scoop, and ongoing child welfare policies contributed to the present-day crisis that was "centuries in the making."⁸⁷ The centuries-long colonization process

⁸³ Alba Estela Maldonado Guevara, *Femicidio en Guatemala: Crimines Contra la Humanidad. Investigación Preliminar*, November 2005. <https://www.corteidh.or.cr/tablas/25828.pdf>

⁸⁴ Victoria Sanford, "From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala," *Journal of Human Rights* 7, no. 2 (2008): 113.

⁸⁵ Marcela Lagarde, *Una Feminista Contra el femicidio*. Revista Envío, no. 278, 2005.

⁸⁶ Canada, National Inquiry into Missing and Murdered Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (2019), 17.

⁸⁷ *Ibid.*, 19.

facilitated the conditions leading to the crisis of MMIWG, as the intersecting racism and sexism espoused by settler government policies created conditions ripe for the violence that these groups continue to experience externally, from the Canadian government and majority society, as well as internally, within their own communities.

Although gender has played significant roles in the commission of genocide against certain groups and/or populations, its gendered impacts have been relatively understudied, reducing the female experience of genocide to rape and sexual violence.⁸⁸ The reality is that genocide includes both lethal and non-lethal acts, which include acts of “slow death” that have specific impacts on women and girls (the relationship between gender and genocide is further unraveled in Part III, below). This is particularly salient in the case of IWG in Canada. Although rape and sexual violence are present within the colonial genocide that occurred, policies such as the Indian Act and residential schools contributed to the “slow death” of Indigenous populations directly because these policies targeted women’s roles as life givers and transmitters of culture and traditions. In this way, IWG were the targets of genocide, carried out via femicide-inducing policies implementing the European/Western patriarchal system, which served to normalize female inferiority and justified violence against women due to the accepted fact that they were deserving.

Weaponizing IWG toward genocide

The accumulation of cultural loss and familial disruption that occurred as a result of the Indian Act and residential schools has diminished IWG, contributing to their specific social and economic marginalization within Canada. These policies have denied them their right to access their own culture, traditions, and ways of living. This has compounded the struggles IWG face, which include poverty, homelessness, and addiction. Regarding their high rates of disappearance and murder, the Canadian government and media has historically paid little attention to this issue. The National Inquiry found that the media in particular perpetuated the idea that IWG are not “newsworthy victims,” which has fostered apathy amongst the larger Canadian public regarding this issue, especially in its implication of their desert of this violence. This has been coupled with a historical lack of political will by the Canadian government to address issues such as sexual, emotional, and physical violence; poverty; housing insecurity and/or homelessness; and barriers to education, training, and employment in the lives of IWG.⁸⁹ Compounded, the historical lack of political will and/or apathy of the Canadian government has

⁸⁸ Canada, National Inquiry into Missing and Murdered Women and Girls, *A Legal Analysis of Genocide* (2019), 8.

⁸⁹ National Inquiry, *Executive Summary*, 33-34.

translated into deficits in accessibility to services; funding; cultural training and culturally relevant services, particularly related to trauma; and policies and procedures in legislation. The National Inquiry found that in many cases, these shortcomings directly impacted the security of IWG, especially when these deficits are present in anti-violence centers.

Additionally, the police and criminal justice system have been sources of trauma, the National Inquiry finding that these institutions did not exist to protect and provide safety, but rather to control, traumatize, and abuse IWG when at their most vulnerable. This has led to police indifference toward cases involving violence against IWG as well as stereotyping and victim-blaming of MMIWG as “drunks,” “runaways out partying,” and “prostitutes unworthy of follow-up.”⁹⁰ Overall, the National Inquiry found the colonial genocidal policies that founded the modern Canadian state to be “inextricably linked to Canada’s contemporary relationship with Indigenous peoples,” evidenced by the modern Canadian policies that continue to perpetuate these colonial legacies. Omissions on the part of the Canadian government has created and normalized “patterns of violence and marginalisation of Indigenous peoples, particularly women, girls and 2SLGBTQQIA people.”⁹¹

Where the Inquiry principally moved away from the common genocide discourse is in applying a much broader definition of violence, illustrated by the acts described above. Indeed, because of its wide mandate requiring an in-depth look at the “systemic causes of *all forms of violence*”⁹² (emphasis added), the Inquiry has not limited itself to addressing physical or sexual violence. In fact it operationalized the definition of violence proposed by the WHO, namely “intentional use or threatened use of power or force that is likely to cause harm against someone else (for example, interpersonal violence), against a group or community (for example, armed conflict), or against oneself (for example, suicide or self-harm).”⁹³ These types of violence can play out as physical and sexual, but also as emotional, psychological, spiritual, verbal, financial, or neglect. In addition, the Inquiry explicitly expanded the definition to include violence whose nature is colonial (relying on the dehumanization of indigenous peoples), cultural (using aspects of culture to justify or legitimize direct or structural violence) and institutional (perpetrated by institutions) leading to systemic or structural violence (the gap between a person’s or community’s

⁹⁰ National Inquiry, *Executive Summary*, 38.

⁹¹ National Inquiry, *Legal Analysis of Genocide*, 24.

⁹² Government of Canada, *Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2016) para. a. i. See full Terms of Reference in Annex I.

⁹³ Cited in MMIWG *Final Report, Volume 1a*, 322.

potential well-being and their actual well-being, when that difference is avoidable), embedded in Canadian society over time.

With such a vast definition of violence, it makes full sense that the developed narrative strayed from the boundaries ascribed by international legal precedents regarding GBV patterns in determining genocide. Overall, racism was at the center of the colonial structure and is still the main cause of violence and marginalization faced by Indigenous communities in Canada. This marginalization is a direct product of the colonial processes that began with 16th century European explorers, leading to the creation of several risk factors, such as poverty, unemployment, and lack of basic needs, that threaten the safety of IWG in Canada.⁹⁴ Over the course of several centuries, the Canadian state's policies have purposefully removed IWG from their traditional roles in governance and leadership. This was done largely through coordinated and combined efforts designed to “destroy and replace Indigenous governance systems with colonial and patriarchal governance models,” such as the Indian Act and the general legal structure present throughout Canada.

These policies targeted victims in a gender-oriented way that served to destroy “the foundations of the group as a social unit,” and have left enduring scars within the targeted groups' social fabric.⁹⁵ In its apathy to concrete change, the state continues to violate IWG's political rights.⁹⁶ According to the National Inquiry, the interconnected nature of human rights means that none of the issues affecting IWG can be considered in isolation, as they must be addressed holistically in order to uphold the rights, safety, and agency of this population.⁹⁷ This inclusive perspective on the violence inflicted upon IWG develops an argument for the perpetration of genocide that separates itself from usual rationales. Simply put, as already detailed, the Inquiry draws a genocide conclusion from historically-based, systemic violence committed against IWG and its continuation to modern day through sustained institutional failures and the weakening of social ties resulting from intergenerational trauma, which itself stemmed from colonial violence pursuant to first contact and settler expansion.

⁹⁴ National Inquiry, *Executive Summary*, 51.

⁹⁵ National Inquiry, *Legal Analysis of Genocide*, 8.

⁹⁶ National Inquiry, *Executive Summary*, 61.

⁹⁷ *Ibid*, 56.

III. Proving genocide: how and why

A. General discussion of genocide: a legal term with sociological value

‘Genocide’ is a term in international law that has inserted itself in the popular consciousness to a level that few technical words have achieved. This is due in large part to the magnitude and gravity of the crime it represents, as well as the “CNN effect,” which has allowed international audiences to observe the devastation of large-scale group-on-group violence in real-time across the world. It has endured in the public imagination and has been applied, with varying levels of credibility, to numerous situations, both historical and ongoing. It is a word that, appropriately, carries a certain weight. Accordingly, the National Inquiry’s ultimate conclusion – that the violence enacted by the Canadian state on the Indigenous populations of Canada amounted to genocide – was one that echoed around the globe.^{98 99} To further understand this conclusion and bring new insight and analysis, it is instructive to first examine the origin and legal context of the term.

Common arguments around the international legal definition: “Physical” vs. “cultural” genocide

The word ‘genocide’ was first coined in 1944 by Polish-Jewish lawyer Raphael Lemkin in his book *Axis Rule in Occupied Europe*. It is most commonly associated with the atrocities of the Holocaust, and in 1948 became the subject of one of the first global human rights treaties, the *Convention on the Prevention and Punishment of the Crime of Genocide* (“the Genocide Convention”). The term originates from the Greek “*genos*,” meaning “people/race,” and the Latin-derived “*cide*,” meaning “the act of killing.” As a result of its intimate association with the Holocaust, a genocide is often erroneously considered to require mass killing, or on the other hand to be *any* act of mass killing; neither of these assumptions are correct. And contrary to popular belief, Lemkin’s use of the term was borne out of not only his experience and observation of the Holocaust, but also a product of decades of scholarship on mass atrocities and persecutions – including colonization, which Lemkin examined closely in the 1920s and 1930s.

In *Axis Rule in Occupied Europe*, Lemkin defines genocide as the following:

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the

⁹⁸ Ian Austen and Dan Bilefsky, “Canadian Inquiry Calls Killings of Indigenous Women Genocide,” *The New York Times*, June 3, 2019, <https://www.nytimes.com/2019/06/03/world/canada/canada-indigenous-genocide.html>.

⁹⁹ BBC News, “Deaths of Indigenous Women 'a Canadian Genocide', Leaked Report Says,” *BBC News*, June 1, 2019, <https://www.bbc.com/news/world-us-canada-48481958>.

political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.¹⁰⁰

This paragraph clarifies several points. First, it makes explicit the numerous means that can be employed to commit genocide. Second, it implies the possibility of genocide occurring on an extended time-scale (specifying “immediate destruction” implies that the opposite, gradual destruction, is possible). The Holocaust is thus not necessarily the *ur*-genocide. Indeed, as historians Michael A. McDonnell and A. Dirk Moses argue, Lemkin “assessed the extra-European cases of colonial genocide in terms of that concept’s generic attributes rather than project the Holocaust back into history as the ideal type with which to categorize previous genocides.”¹⁰¹ For example, in Lemkin’s chapters on ‘Spanish America,’ he writes extensively on the three types of genocide – physical, biological, and cultural – and identifies six forms of cultural genocide: “destruction of leadership, forced conversion, prohibition of cultural activities, destruction of religious and cultural symbols, destruction of cultural symbols, and looting.”¹⁰² Notably, McDonnell and Moses assert that in Lemkin’s view, “occupations and settlements conducted on such terms—that is, without recognition of Indigenous rights and subsequent negotiations—were bound to issue in genocide because resistance was as inevitable as its brutal suppression.”¹⁰³

While Lemkin’s position – that cultural genocide is genocide as such – seems to be clearly elaborated, the place of cultural genocide in the international legal framework is debated. During the drafting of the Genocide Convention, ‘cultural genocide’ was considered for use in the legal definition of genocide, but was ultimately soundly rejected by the UN General Assembly by 25 votes to 6, with 4 abstentions and 13 absences.¹⁰⁴ In its 1996 Draft Code, the International Law Commission (ILC) noted, “as clearly shown by the preparatory work for the Convention, the destruction in question is the material destruction of a group either by physical or biological means, not the destruction of the national, linguistic, religious, cultural, or other identity of a group.”¹⁰⁵ The definition agreed upon in Article 2 of the 1948 Convention is thus as follows:

¹⁰⁰ Raphael Lemkin, *Axis Rule in Occupied Europe : Laws of Occupation, Analysis of Government, Proposals for Redress* (Clark, NJ: Lawbook Exchange, 2008), 79.

¹⁰¹ Michael A. McDonnell and A. Dirk Moses, “Raphael Lemkin as Historian of Genocide in the Americas,” *Journal of Genocide Research* 7, no. 4 (2005): 501–29.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ Prosecutor v. Kistić, International Criminal Tribunal for Yugoslavia - Trial Chamber - Judgement (2001), §576, note 1284, accessed May 10, 2020, <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>

¹⁰⁵ *UN Doc A/51/10*, “Report of the International Law Commission on the work of its forty-eighth session, 6 May - 26 July 1996, Official Records of the General Assembly, Fifty-first session, Supplement No.10”, 90.

...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.¹⁰⁶

Despite the rejection of cultural genocide in a larger sense, paragraph 2(e) can perhaps be understood as a remnant of the concept, as the forcible transfer of children would not strictly be “the material destruction of a group either by physical or biological means,” but rather a more gradual means of destruction through the estrangement from and prohibition against the transmission of elements of the group’s culture. (For more on this concept, see the discussion of “social death,” below.)

Indeed, though it was excluded from the Convention, the Krstić judgment of the International Criminal Tribunal for Yugoslavia (ICTY) acknowledged that in recent years there has been movement in certain legal circles to incorporate elements of cultural genocide into a broader international legal understanding. For example, in 1992, the UN General Assembly voted to label ethnic cleansing as a form of genocide and in 2000, the Federal Constitutional Court of Germany stated that “the intent to destroy the group [...] extends beyond physical and biological extermination.”¹⁰⁷ A 1994 draft of Article 7 of the UNDRIP stated that “Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide;”¹⁰⁸ however, the use of “cultural genocide” was replaced by the unmodified “genocide” in the final 2007 version, with an additional reference to “forced assimilation” in Article 8.¹⁰⁹ This could be seen either as evidence of an acceptance of cultural genocide as a form of genocide as such, or that it falls solely under “forced assimilation,” and not genocide.

It is worth noting here that Canada was one of just four states – along with Australia, New Zealand, and the United States – to vote against the UNDRIP in the General Assembly. The colonial settler history and extremely diminished, but still substantial, Indigenous population of all four of these countries is not

¹⁰⁶ UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, 277. Available at: <https://www.refworld.org/docid/3ae6b3ac0.html>, accessed 10 May 2020.

¹⁰⁷ Prosecutor v. Krstić, International Criminal Tribunal for Yugoslavia - Trial Chamber - Judgement (2001), §579, Accessed May 10, 2020, <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>

¹⁰⁸ “1994/45. Draft United Nations Declaration on the Rights of Indigenous Peoples,” Political Database of the Americas (Georgetown University), accessed May 10, 2020, <https://pdba.georgetown.edu/IndigenousPeoples/UNdraft.html>.

¹⁰⁹ UN Doc A/RES/61/295, “United Nations Declaration on the Rights of Indigenous Peoples,” 2007, accessed May 10, 2020, <https://undocs.org/A/RES/61/295>

without import. The term ‘genocide’ has been variously applied to these nations’ treatment of Indigenous peoples, both during the period in which they were colonies of the British Empire, and often in a more systematic way after they established independence and consolidated their statehood and national identity – which was occasionally done through the creation of an out-group, of an ‘other,’ to which Indigenous peoples undoubtedly belonged and to which settlers were in opposition. Australian scholar John Docker argues, for example, that a closer examination of Lemkin’s preparatory notes for his large-scale survey on the history of genocide (also discussed above) reveal a wider-ranging conception of genocide than the lawyer had previously articulated in *Axis Rule*.¹¹⁰

In his book chapter, “*Are Settler Colonies Inherently Genocidal?*”, Docker notes Lemkin’s acknowledgement of the strong potential for cultural conflict and genocide whenever there is an “encounter between migratory nomadic societies and sedentary ones.” Docker applies this dichotomy to colonialism, characterizing Western Europe’s expansionism as migratory and nomadic compared to the territorially dispersed but largely sedentary Indigenous peoples of the Americas.¹¹¹ This pattern of expansionism and genocide and/or ethnic cleansing can be observed throughout history. But for states with a relatively recent history of settler colonialism, the less immediate effects of the colonial genocidal methods and the existence of ongoing abuses of the rights of Indigenous peoples often precludes admission of complete guilt for historical wrongdoing(s), as it would require direct action in the present. All four previously mentioned countries have since formally accepted the UNDRIP but have generally kept to the position that it is an “aspirational” document.

Given the broader definition posited in Lemkin’s notes and the international discourse of the subsequent 70 years, why has the international legal definition of genocide remained largely static? William Schabas argues “the obstinate refusal to modify the document is not explained by some innate conservatism in the international lawmaking process. Rather, the gaps left by the somewhat narrow definition of genocide in the 1948 Convention have been filled more or less satisfactorily by the dramatic enlargement of the ambit of crimes against humanity in the 1990s.”¹¹² He states that because of this enlargement, judicial interpretation of article 2 has remained relatively faithful to the intent of the drafters of the provision, and thus does not include attacks on a group’s culture or ethnic cleansing.¹¹³ Given the summary rejection

¹¹⁰ John Docker, “Are Settler-Colonies Inherently Genocidal?,” in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History* (Berghahn Books, 2008), 86.

¹¹¹ Ibid, 96.

¹¹² William Schabas, ” Convention on the Prevention and Punishment of the Crime of Genocide,” *United Nations Audiovisual Library of International Law* (2008), <https://legal.un.org/avl/ha/cppcg/cppcg.html>.

¹¹³ Ibid.

of cultural genocide as part of the Genocide Convention definition during drafting, it is difficult to argue that its exclusion was unintended. However, there remained a significant contingency, including Lemkin himself, that believed in the idea of cultural genocide as genocide in itself, and paragraph 2(e)'s inclusion alone is evidence of the consideration's weight.

The distinction is thus relatively unclear. This section, and more generally this paper, is not a legal analysis and will not make a determination on the argument, but it is important to briefly examine the difference made by the use of one term or the other. "Cultural genocide" includes a modifier – yes, it is genocide, but of a certain type – whereas the modifiers "biological" and "physical" are rarely attached to the term "genocide," except in technical discourse. As a term, cultural genocide feels easier to accept, perhaps because it implies a lower level of immediate destruction and killing. However, as has been discussed extensively in genocide scholarship, and will be elaborated upon below, killing is not necessarily the intrinsic element of genocide.

Whatever the reason (and the above is assumption), there seems to be a visible difference in reaction. There could be a number of contributing causes, but it is perhaps demonstrative that when Canada's Truth and Reconciliation Commission (TRC) on residential schools stated in its final report that Canada had committed cultural genocide, the public attention, and outcry, was not nearly as intense as when the National Inquiry on MMIWG labeled it simply genocide, four years later.

The concept of "social death"

As discussed above, the definition of genocide has tended to principally, if not only, rely on direct mass killings in its application. Though such a position is understandable, as genocide is considered one of the worst atrocities humanly possible and must therefore be associated with acts that meet this threshold, it implies that very few situations are widely accepted as fitting within the legal boundaries of genocide and results in failures to provide appropriate and effective justice for victims and survivors. As James Snow articulated: "Undue focus on body counts is problematic in theorizing genocide, for delimiting both what is included in the frame and, correlatively and more importantly, what is excluded from the frame."¹¹⁴

In this context, various theories have been developed, most commonly within the spheres of philosophy and sociology, in order to offer new, more inclusive interpretations of the concept of genocide. One such

¹¹⁴ James Snow, "Claudia Card's Concept of Social Death: A New Way of Looking at Genocide," *Metaphilosophy*, 47, no. 4-5 (2016): 611.

theory is that of *social death*, of which “genocide is a most extreme example,”¹¹⁵ a perspective principally proposed and elaborated by Claudia Card who stated that social death “enables us to distinguish the peculiar evil of genocide.”¹¹⁶ In broad terms, this idea proposes that social death, which is the result of the irreparable damage of social relations tying a group together, is the most appropriate measure for the demonstration of genocide, pursuant to the notion that genocide is distinguishable from other crimes – such as war crimes or crimes against humanity – because the kind of harm it induces specifically targets identifiable, protected groups, who are linked together through social bonds.

Diving deeper, social death infers “extreme and profound loss” and has been applied in a number of fields such as gerontology, refugee studies, slavery studies, and incarceration. However, common themes of power dynamics, loss of social and cultural capital, and social exclusion, are omnipresent.¹¹⁷ In the specific context of genocide, Jana Králová, identified three primary features of social death, namely: “loss of social identity, loss of social connectedness, and losses associated with the disintegration of the body.”¹¹⁸ The first two elements can be understood at face value, but the latter needs further clarification. Bodies do not inherently become socially dead in physical death. Indeed, when death rites and the memories of the social and cultural impact a person had are perpetuated, the bonds can survive beyond physical disappearance. However, genocide disrupts the cultural connections that groups have to their dead and weaponizes physical death toward the disintegration of social interactions and identity.¹¹⁹ It is this cultural and social disruption, this social death, more than the physical acts – which social bonds can survive – that constitutes the essence, the *telos*¹²⁰ of genocide.

In Card’s definition of social death, two key concepts are unraveled: social vitality and natal alienation. In her words, the former “exists through relationships, contemporary and intergenerational, that create an identity that gives meaning to a life.”¹²¹ Social vitality is that which allocates significance to existence and which sustains both individuals and communities, through social connections. Reciprocally, the prosperity of communities sustains social vitality by feeding individual social needs. Its destruction is thus at the heart of social death by not only directly inflicting ostracization and loss of identity, but by also resulting in natal alienation.

¹¹⁵ Jana Králová, “What is social death?” *Contemporary Social Science*, 10, no. 3 (2015): 243.

¹¹⁶ Claudia Card, “Genocide and Social Death,” *Hypatia*, 18, no. 1 (2003): 63.

¹¹⁷ Králová, 236.

¹¹⁸ *Ibid.*, 237.

¹¹⁹ *Ibid.*, 242-243.

¹²⁰ Snow, 618.

¹²¹ Card (2003), 63.

First developed in the context of slavery, natal alienation refers to the social and cultural status of descendants of those who became socially dead. It is a long-term, persistent injury to an individual's sense of self and to larger groups as it leads to the loss of traditions, languages, and other cultural elements that build social vitality because the ancestors of the natively alienated were unable to pass on that knowledge.¹²² Importantly, “[t]hose who are *natively* alienated are *born* already socially dead.”¹²³ In other words, social death, when inflicted, does not end at physical death. It is carried on by the following generations who find themselves unable to reconstruct the group they originated from, successfully destroyed through genocidal patterns that target human potential.¹²⁴ It is also important to highlight that knowledge and memory are insufficient in forming social vitality; participation in the social forms that are known or remembered is necessary.¹²⁵

The natively alienated are thus arguably condemned to remain socially dead, unable to experience key social and cultural practices themselves. Yet, the other side of this coin is that memory of genocidal violence can become integrated in the culture of a group, reconstructing social identity upon the shared experience and shared mourning. This implies that genocide can be sustained through actions, whether direct or indirect, aiming to destroy this memory. Revisionist history and denial of the violence experienced by a community are examples of such acts, as well as the destruction of memorial sites. Simply put, “[d]enialism, then, seeks to destroy not only a past but also a present”¹²⁶ by dismantling hopes for a revival of social vitality.

Thus, social death can be grasped as the ultimate objective of genocide and as its distinguishing feature from other mass atrocities, often continuing beyond physical death and through vast temporal spaces, enduring decades or even centuries, deepening the scope of its violence.¹²⁷ Genocide is therefore uncovered as taking more “sophisticated” forms, beyond killing and beyond its commonly accepted time-bound nature, involving “structural aggression or violence” which persists through time, in similar or different configurations, and enduringly impacting the survival of a given group.¹²⁸

¹²² *Ibid*, 69-73.

¹²³ *Ibid*, 74.

¹²⁴ Claudia Card, *Confronting Evils. Terrorism, Torture, Genocide* (Cambridge: Cambridge University Press, 2010), 254.

¹²⁵ Card (2003), 76.

¹²⁶ Snow, 621.

¹²⁷ *Ibid*, 620.

¹²⁸ Bojan Žalec, “Genocide as social death: A comparative conceptual analysis,” *Anthropological Notebooks*, 19, no. 2 (2013): 62.

So, the concept of social death can allow for a reframing of the harm of genocide and can build a foundation for greater justice. This reframing moreover allows for the reevaluation of marginalized victims who could not fit within the dominant discourse, notably women. In fact, gendered analyses of genocide underline that women often describe their experience of genocide through “social death, fractured relationships, and the destruction of selves that have been constructed relationally.”¹²⁹ Only within the concept of social death can these notions, and therefore women’s voices, be considered pertinent to genocide, a relevance lost if only body counts are regarded.

B. Genocide, gender, and indigeneity: intersection of concepts

The above discussion of the legal ramifications of genocide and of the sociological concept of social death sets the stage for a more in-depth analysis of genocide discourses, especially as it relates to gender and Indigenous aspects. The legal definition has been established as narrow and, despite a thorough legal analysis,¹³⁰ many of the questions raised by the National Inquiry hardly fit within its boundaries. However, the balance can shift if wider perspectives are included in discussing genocide beyond conventional confines. This section aims to unravel the reciprocal ways in which gender and genocide affect one another, accounting for a narrow application of gendered approaches to genocide and the further examination of the link between the two concepts this warrants.

Genocide and gender

The gender lens was long ignored in the genocide discussion due to the ‘group’ nature of the act which, on the surface, can be interpreted as inferring gender neutrality and lack of differentiation between victims on the basis of sex or gender.¹³¹ However, modern genocides, notably in Rwanda and Bosnia and Herzegovina, have uncovered the importance of gender constructs in genocide, as they inform patterns of attack.¹³² Gender is now largely recognized as pervasive to genocide, “woven into the perpetrators’ planning and commission of coordinated acts...[to] maximize the crime’s destructive impact on protected groups.”¹³³

¹²⁹ Snow, 618.

¹³⁰ See a summary in Annex II.

¹³¹ Elisa Von Joeden-Forgey, “Gender and Genocide,” in *The Oxford Handbook of Genocide Studies*, eds. Donald Bloxham and A. Dirk Moses (Oxford, UK: Oxford University Press, 2010), 62.

¹³² *Ibid.*, 62.

¹³³ Sareta Ashraph, *Beyond Killing: Gender, Genocide, & Obligations Under International Law*, eds. Akila Radhakrishnan and Grant Shubin (New York City, USA: Global Justice Center, 2018), 2.

In sum, genocide is a “gendered atrocity,”¹³⁴ a “scenario of power that is gendered at its core,”¹³⁵ a crime in which gender “can never be ancillary,”¹³⁶ as it is committed in gender-specific ways. It thus follows that a well-rounded, holistic understanding of genocide requires considerations of gender and of its distinctive impact on genocidal targets. Elisa Von Joeden-Forgey articulated this well in asserting that:

Gender can help us see that genocide is, in its most basic form, a crime against the generative power of a group and the institutions that support it, especially the family. The perpetrators of genocide organize the destruction of a group by targeting members in accordance with the roles that they are perceived to play in the group's biological and social reproduction. Since the family is the basic unit of the reproduction of groups, and since perpetrators so often find their victims in family situations, the family and the roles that adhere to it are prime theatres for the enactment of genocidal intent.¹³⁷

Importantly, genocidal gender constructs need not be evidently deliberate. In fact, socio-economic and cultural frameworks, state structures, or national values that provide for a specific understanding of gender identities and roles can be exploited by *génocidaires* through the targeting of institutions considered predominantly feminine or masculine,¹³⁸ a more deceptive strategy that can go unnoticed as its attacks are carried out in more covert means – i.e. not mass killing.¹³⁹

These covert actions, however, constitute the central reason for which gender remains a marginal issue within genocide, disproportionately impacting women. Indeed, despite progress in attempts to unravel the relationship between gender and genocide, it remains common practice to hierarchize genocidal violence and to dismiss acts that do not result in death.¹⁴⁰ This primarily implies a discriminatory lack of recognition for slow deaths in the context of genocide, of which women tend to be the primary victims.¹⁴¹ It further suggests that “the expansive female experience of genocide is often reduced to rape and other acts of sexual violence, just as the male experience is frequently and erroneously limited to killings,”¹⁴² a notion introduced previously in this paper. Women’s voices are therefore often left unheard in relation to genocide, because the gender perspective remains under-developed and focused on narrow elements. As Sareta Ashraph described: “When an understanding of women and men, girls and boys as gendered

¹³⁴ Sanford, 107.

¹³⁵ Von Joeden-Forgey, 79.

¹³⁶ Ashraph, 8.

¹³⁷ Von Joeden-Forgey, 78.

¹³⁸ Charli Carpenter, “Beyond ‘Gendercide’: Incorporating Gender into Comparative Genocide Studies,” *The International Journal of Human Rights* 6, no. 4 (2002): 93.

¹³⁹ *Ibid*, 92.

¹⁴⁰ Helen Fein, “Genocide and gender: the uses of women and group destiny,” *Journal of Genocide Research* 1, no. 1 (1999): 44.

¹⁴¹ Ashraph, 17.

¹⁴² *Ibid*, 9.

subjects is failed to be considered from the crime of genocide, women and girls in particular become a legal, if not a factual irrelevance, and are removed from the narrative history that forms in the aftermath of a genocide.”¹⁴³

Targeting men as men, and women as women

Encountering and enduring genocide takes on divergent forms depending on gender. To this idea, Ashraph articulated that “[f]emale and male members of targeted groups, by the perpetrators’ own design, experience genocide in distinct ways by reason of their gender.”¹⁴⁴ Genocidal gendered acts differentiate between men and women because of the separate traditional or cultural roles to which they are respectively ascribed, especially within familial spheres, which connect to the reproductive process of a group.¹⁴⁵ Importantly, genocidal distinctions of gender roles rely on the perceptions and prejudices of perpetrators, but these narratives are built upon and informed by the social, cultural, political, and economic nuances associated with gender identities within a given society.¹⁴⁶

A pioneering concept aiming to tie gender and genocide together was that of ‘gendercide.’ Principally focused on mass killing, the term was coined in 1985 by Mary Ann Warren in *Gendercide: The Implications of Sex Selection*. She defined gendercide as “the deliberate extermination of persons of a particular sex (or gender)”¹⁴⁷ and examined the targeting of women and girls by this act. This term was then further developed by Adam Jones, whose work came to be heavily guided by and center around this issue. Defining gendercide as “gender-specific mass killing,” and arguing that it stands self-sufficiently as a form of genocide, Jones’ work diverged from that of Warren and previous gender-focused research by underlining the gender-based vulnerabilities of men and boys in the context of genocide, specifically civilian men.¹⁴⁸ Though there is disagreement about Jones’ claim that gendercide is genocidal in its nature, with many favoring a definition that positions gendercide merely as a specific act within an ongoing genocide, the gendercide discourse has led to generally agreed-upon conclusions, notably that gender divisions in analyzing gendercide allow for the distinction between gender as a *cause* and gender- or sex-specific outcomes an *effect*.¹⁴⁹

¹⁴³ Ibid, 61.

¹⁴⁴ Ibid, 2.

¹⁴⁵ Von Joeden-Forgey, 73.

¹⁴⁶ Ashraph, 8.

¹⁴⁷ As cited in: Adam Jones, “Gendercide and genocide.” *Journal of Genocide Research* 2, no. 2 (2000): 186.

¹⁴⁸ Von Joeden-Forgey, 68.

¹⁴⁹ Carpenter, 83.

In other words, gendercidal acts pursue a rationale of destruction through gender-selectivity, inevitably leading to gender- or sex-specific results. As a note, sex-specificity refers to particular outcomes that affect a person on the basis of their biological sex, and not on the basis of their social and cultural gender identity: for example, policies of forced pregnancies are sex-specific in that they target only females who are biologically capable of carrying a child, but they are gender-selective in that they likely aim to attack the perceived reproductive and familial role of women.

Lastly, gendercide can engage its gender-selectivity and gender- and sex-specificity indirectly through pre-existing structures which themselves generate distinctive gender outcomes. This is to say that a gendercidal policy does not have to explicitly target a particular gender but can have the same effect by targeting institutions that are gendered in prominent ways. This is especially true for men who, especially in patriarchal societies, are overrepresented in institutions that are at higher risks of being violently affected because of their societal significance, such as the military or political elites.¹⁵⁰ Jones develops this idea further by discussing “gendercidal institutions” – once more, the military, but also incarceration, *corvée* labor, etc. – which tend to be male-dominated, especially in times of conflict, and therefore lead to masculine gendercide.¹⁵¹

Thus, gendercide is a steppingstone toward more in-depth consideration of the link between gender and genocide. However, it is not without issues, the most important of which is the concept’s attention to genocide solely as mass killing, which has already been established as a problematically marginalizing way of understanding genocide that often fails to include women and children. It is further unfortunate that gendercide has sometimes been used as a counter-feminist tool seeking to reject and oppose analyses of genocide and its impacts on women. What is crucial to understand here, as David Buchanan defends, is that “[gendered approaches to genocide are] not a zero-sum game in which every word written on male victimization automatically leads to one fewer word written on female suffering or vice versa.”¹⁵²

Though it is true that fully understanding genocidal targeting of women involves the problematization of the killing of men as well¹⁵³ and that adult, civilian men can constitute a highly vulnerable population,¹⁵⁴ a specific focus on women’s experiences of genocide is warranted in the face of growing evidence of their selective targeting and of a historical lack of inclusion within genocidal discourses, as non-lethal

¹⁵⁰ Carpenter, 83.

¹⁵¹ Jones, 194-199.

¹⁵² David Buchanan, “Gendercide and human rights.” *Journal of Genocide Research* 4, no. 1 (2002): 102.

¹⁵³ Sanford, 109.

¹⁵⁴ Jones, 193.

genocidal acts, disproportionately affecting women, have rarely been recognized as genocide on the international legal scene¹⁵⁵ and were largely absent from the crafting of the Genocide Convention's language.¹⁵⁶

Common to the experiences of women in genocide are sexual violence and life force crimes – which occur in private spheres of life such as the household, relations between family members, and sexual intercourse. The latter uncover genocidal intent through patterns of destruction aiming to disrupt hallowed aspects of communal life that constitute the foundation of a group.¹⁵⁷ Genocidal assaults on women have even deeper roots within social structures. As already mentioned above, women are targeted for their perceived societal roles, a perception directly fed by existing misogynistic dynamics. These attitudes, which are likely to be perpetuated post-genocide by the dominant group, only deepen the trauma caused and amplify the various inequalities that women and girls face.¹⁵⁸

Having underlined the importance of women's perceived gender roles in the commission of genocide, two such principle roles arise: women's reproductive role and their role as culture keepers. These notions are discussed below. It is important to note that this paper does not contend that these are *de facto* main roles that women play or aim to play in society. Rather, it is admitted that, though reductive in many ways, these are the central *perceived* roles that inform genocidal thinking and adjudication.

Genocide, notably through the component of biological destruction, is closely linked to reproduction as it “must either annul reproduction within the group or appropriate the progeny in order to destroy the group in the long run.”¹⁵⁹ Simply put: “Reproduction serves to continue the group: genocide to destroy it.”¹⁶⁰ Women hold a central place within this process and are reductively viewed by *génocidaires* “as wombs, drawing upon the ingrained stereotypes of women as carriers of life, vessels for paternal identity, and also the beings more responsible for their community's regeneration.”¹⁶¹ This perception of women's reproductive role is nothing new and has been evidenced in the thinking of ancient instances of genocide, in which women were more likely to be incorporated within the dominant, genocidal group to perpetuate that lineage.¹⁶² Furthermore, the reproductive aspect of women's position is closely linked to their

¹⁵⁵ Ashraph, 3.

¹⁵⁶ Von Joeden-Forgey, 78.

¹⁵⁷ Von Joeden-Forgey, 78.

¹⁵⁸ Ashraph, 2.

¹⁵⁹ Helen Fein, “Genocide and gender: the uses of women and group destiny,” *Journal of Genocide Research* 1, no. 1 (1999): 43.

¹⁶⁰ Fein, 43.

¹⁶¹ Ashraph, 34.

¹⁶² Fein, 48.

socialization via marriage and family patterns.¹⁶³ As such, genocidal targeting of women's perceived reproductive role creates a ripple effect and leads to the breaking down of social and cultural bonds tying the group together.

Beyond reproductive and familial roles, women, especially in the context of Indigenous cultures, are often regarded as the “the backbone and keepers of life of [I]ndigenous nations.”¹⁶⁴ As already discussed in this paper, pre-contact Indigenous communities functioned as matriarchies, with women and men being symbiotically interconnected. This traditional significance, echoed in a number of cultures, makes women and girls primary targets for genocidal annihilation as their destruction, whether physical, biological, or cultural, essentially weakens the group and facilitates their ultimate extermination.

Femicide: Gender and Social Death

Having examined in detail the importance of gender as a component of genocidal intent, it is essential to turn to genocidal conduct and the ways gender is instrumentalized within the process of destruction.¹⁶⁵ In discussing this, this section focuses especially on GBV and femicide, defined previously in this paper, as tools of genocide.

Recalling earlier discussions, femicide is at its core political, holding both perpetrators and states responsible for the normalization of misogyny that results in increased levels of violence against women, often met with impunity and silence.¹⁶⁶ Femicide ultimately constitutes patterns of femicide, which is in and of itself a significant term as well, adding to ‘homicide’ a sociological, gender-based motivation behind the killing of a woman.¹⁶⁷ However, according to Corradi et al., “femicide is all of the hegemonic masculine-social methods used to destroy females’ rights, ability potential and power to live safely. It is a form of abuse, threat, invasion and assault that degrades and subordinates women.”¹⁶⁸ This implies that femicide, and in turn femicide, similarly to genocide, is not, and cannot be, limited to acts of killing. It is crucial to understand this notion in the context, described above, of the linkages between gender and genocide, as well as in the context, detailed below, of the MMIWG National Inquiry.

¹⁶³ Ibid, 43.

¹⁶⁴ Marie Ralstin-Lewis, “The Continuing Struggle against Genocide: Indigenous Women’s Reproductive Rights,” *Wicazo Sa Review* 20, no. 1 (2005): 71.

¹⁶⁵ Von Joeden- Forgey, 66.

¹⁶⁶ Sanford, 112-113.

¹⁶⁷ Consuelo Corradi, Chaime Marcuello- Servós, Santiago Boira and Shalva Weil, “Theories of femicide and their significance for social research,” *Current Sociology* 64, no. 7 (2016): 977.

¹⁶⁸ Corradi et al., 982.

GBV and sexual violence must be viewed through a similar lens when discussing feminicide or genocide, meaning a lens of that accounts for both the direct violence perpetrated but also the broader circumstances, methods, and repercussions they infer. As a genocidal strategy, GBV and sexual violence constitute “simultaneously an assault on the victim and on the existence, identity, and cohesiveness of the group.”¹⁶⁹ There many ways in which GBV, including sexual violence, and feminicide can be understood as tools of genocide, means to disrupt and destroy a given protected group by ripping away the physical, biological, cultural, social, and spiritual integrity of its women and girls. However, could feminicide be itself a genocidal end?

In other words, is the gender-based targeting of women sufficient to amount to genocide by resulting in the destruction of a protected group in whole or in part? To answer that question, the previously described concept of social death can be used. Recalling the centrality of social vitality and the argued ultimate objective of genocide of violently robbing away this element, gender-based genocide is conceivable, perhaps even inevitable. Indeed, it has been established that genocidal, gender-selective attacks against women are motivated by the prospect of destroying the social bonds and cultural dynamics associated with their perceived roles. Ties within a community are thus unraveled, but so are the foundational elements upon which victimized women built their identity, their social vitality. Indeed, “committed against women and girls, genocide is a crime against a wider protected group, but it is equally a crime committed against a female, as an individual.”¹⁷⁰ Losing their connection to their society, their culture, their spirituality, and perhaps even their bodies, women and girls targeted by *génocidaires* who physically survive genocidal assaults will nevertheless become socially dead. In turn, their natally alienated descendants will also suffer from social death and, insidiously, the entire group is lost, achieving genocide by targeting women and girls.

Genocide and indigeneity

The discussion of the relationship between colonialism and genocide is profoundly complex and controversial, involving fervent debates regarding the nature and expression of the relationship between the settler/dominant culture and Indigenous peoples. As already discussed in this paper, ‘cultural genocide’ was ultimately left out from the international conventional definition of genocide, principally because states with colonialist past objected to the responsibilities it would entail for them. Yet, the conversation of the link between indigeneity, colonialism, and genocide has continued. In the framework

¹⁶⁹ Ashraph, 19.

¹⁷⁰ Ibid, 48.

of this paper, it is important to introduce the broad lines of this debate in order to contextualize the work and findings of the National Inquiry, whose endeavors fall well within the subject of genocide and indigeneity.

Colonialism: otherness and assimilation

First and foremost, as discussed in depth in Part I, the categorization to which Indigenous peoples have been subjected has been a source of discrimination, marginalization, and violence. Its oppressive nature can be examined further as inherently intertwined with genocidal intent and conduct. Recalling Chalmers' arguments, he contends that these notions are two faces of the same coin, paradoxically connected in the above-mentioned concept of 'otherness.' Firstly, colonialism is necessary to indigeneity as the term 'Indigenous' cannot exist prior to first contact by settlers. As such, "[t]he colonizer and colonized are defined in relation to one another and therefore inseparable from one another."¹⁷¹ Secondly, connecting colonialism to genocide, Chalmers asserts that "indigeneity and genocide are rooted in otherness... they [too] are conceptually inseparable from one another"¹⁷² and moreover, states that "settler colonialism entails the erasure of one "national pattern" and the imposition of another, which is by definition genocide."¹⁷³ In other words, relying on a two-phase conception of genocide, from symbolic erasure via the conceptualization of indigeneity to physical and/or cultural destruction in genocide,¹⁷⁴ colonialism is presented as intrinsically genocidal.

This is further supported by the notion of 'racial apartheid,' which Lawrence asserts to be a contingent element informing the existence of colonial societies.¹⁷⁵ Through the construction of Indigenous people as essentially homogenous and distinct from the European, acceptable and dominant norm, which aims to transform Indigenous peoples into imperial subjects, colonialism organically creates a protected group against whom genocide can be perpetrated. Chalmers clearly articulates this inference:

Settler colonialism produces several layers of violence: imposing the category of indigeneity is an act of symbolic violence upon autonomous peoples, while implementing genocide is a more concrete act of violence upon cultures and bodies.... It is this construction of homogenous otherness that compels and partly enables the settler colonizer to commit genocide. That is, the act of symbolic violence helps establish the conditions for a more concrete act of violence.¹⁷⁶

¹⁷¹ Chalmers, 181.

¹⁷² Ibid, 178-179.

¹⁷³ Ibid, 186.

¹⁷⁴ Ibid, 179.

¹⁷⁵ Lawrence, 8.

¹⁷⁶ Chalmers, 187.

Importantly, the oppressive categorization of Indigenous peoples and the persecution they experience, rooted historically, are pervasive through time, surviving to this day in contemporary policies via colonial legacy. This implies that the symbolic genocide perpetrated against Indigenous peoples, the “genocide that precedes genocide,”¹⁷⁷ endures today, thus sustaining the colonial foundation for genocide. It further suggests insidious means of committing genocide in which “cultural genocide occurs because of systematic, structural practices that are not always consciously focused on the destruction of culture.”¹⁷⁸ Such practices are highly variable in nature, but tend to commonly perpetuate Indigenous ‘otherness’ while also encouraging, or compelling, assimilation into settler culture and ways of life.¹⁷⁹

Despite empowerment movements through which “Indigenous peoples have reclaimed [indigeneity] in a way that reflects their unique needs and interests[,] indigeneity can [still] be a tool of oppression or of liberation depending upon who wields it.”¹⁸⁰ The colonial legacy of settler categorization of Indigenous peoples has yet to disappear and entails that “eventually Indians will simply be officially defined out of existence.”¹⁸¹ Examining Canada specifically, Lawrence estimated that “under [the Indian Act], there will cease to be any status Indians in four to seven generations from now.”¹⁸² Such erasure is at the heart of genocide.

This forced disappearance and more general notions of cultural annihilation through involuntary evolution, or through genocidal attacks on conditions of life,¹⁸³ must be distinguished from normal patterns of change, which occur continuously and organically in all cultures, including Indigenous ones. Under such patterns, if a community fitting the definition of a ‘protected group’ were to cease to exist, it would not constitute genocide. Relatedly, the significant transformation of a community through normal patterns of change would not necessarily take away from their nature as a ‘protected group’ as long as the dominant culture still perceived them through the lens of ‘otherness.’ Simply put, “while culture is in a sense always ‘changing’, it is the *context* and *manner* in which it changes that is important to the question of genocide.”¹⁸⁴ This is particularly relevant for Indigenous peoples who live in urban areas as

¹⁷⁷ *Ibid*, 187.

¹⁷⁸ Lindsey Kingston, “The Destruction of Identity: Cultural Genocide and Indigenous Peoples,” *Journal of Human Rights* 14, no. 1 (2015): 67.

¹⁷⁹ *Ibid*, 69.

¹⁸⁰ Chalmers, 181.

¹⁸¹ Scott Rutherford, “Colonialism and the Indigenous present: an interview with Bonita Lawrence,” *Race & Class* 52, no. 1 (2010): 19.

¹⁸² *Ibid*, 11.

¹⁸³ Damien Short, “Cultural genocide and indigenous peoples: a sociological approach,” *The International Journal of Human Rights* 14, no. 6 (2010): 840.

¹⁸⁴ *Ibid*, 843.

the evolution of their characteristics does not negate the central essence of indigeneity and history of colonial oppression.

Colonial legacy and social death

The notion of social death, and the way it informs rationales of genocide, once more provides great insight into the covert ways in which genocide is committed against Indigenous peoples through colonialism and its legacy. Recalling the definition, it is useful to note that “cultural [or social] vitality [is] essential to group health and as such, cultural destruction will almost inevitably produce dire physical consequences – which is especially true of indigenous peoples.”¹⁸⁵ In fact, examining the specific situation of Canada, many colonial and contemporary policies illustrate well the centrality of social death within Indigenous genocide. Firstly, Andrew Woolford and James Gacek developed the concept of ‘genocidal carcerality,’ which “refer[s] to spaces enlisted toward the elimination of a targeted group, either for purposes of exterminating or transforming the group so that it no longer persists”¹⁸⁶ and “is produced when space is used to destroy...., to target fundamental aspects of group life.”¹⁸⁷

This notably includes Indian Residential Schools and Indian reserves. The former have been heavily studied and shown to extract the social vitality of Indigenous children and thus of their whole communities in the long-term: “While in residence, [Indigenous children] faced an assimilative education that taught them to despise their Indigenous identities”¹⁸⁸ and “left the schools with a feeling of detachment and loss, unable to fit into the white world into which they were supposed to be assimilated, but also unable to return to their home communities since they no longer felt connected to their culture.”¹⁸⁹ Generations after their enrollment into residential schools, “[t]he children and grandchildren of [those who lost touch with their communities] are struggling to situate themselves...within a discourse of Indianness that denies their realities.”¹⁹⁰ In other words, genocidal carcerality led to social death and to the natal alienation of the descendants of those who experienced those spaces.

Moreover, the sentiment of permanent alienation from Indigenous culture is also closely linked to the above-mentioned question of categorization. Within the specific context of Canada, to provide an

¹⁸⁵ *Ibid*, 839.

¹⁸⁶ Andrew Woolford and James Gacek, “Genocidal carcerality and Indian residential; schools in Canada,” *Punishment & Society* 18, no. 4 (2016): 404.

¹⁸⁷ *Ibid*, 407.

¹⁸⁸ *Ibid*, 404.

¹⁸⁹ *Ibid*.

¹⁹⁰ Lawrence, 6.

example, it is more specifically linked to the issues raised by the Indian Act – which have been highlighted throughout this paper. Lawrence described that:

A crucial issue to understand here is that without Indian status, and the band membership that goes along with it, Native people are not allowed to live on any land part of an Indian reserve in Canada (unless it is leased to them as an "outsider"). They cannot take part in the life of their own community unless they have Indian status and hence band membership in that community. We can see, then, that the colonial act of establishing legal definitions of Indian-ness, which excluded vast numbers of Native people from obtaining Indian status, has enabled the Canadian government to remove a significant sector of Native people from the land.”¹⁹¹

So, the internalization of government definitions because of the benefits they imbue implies that today, social death occurs from within, in addition to the social bonds which had been previously severed by state colonial and contemporary policies.

C. The MMIWG National Inquiry: Applying and incorporating intersectional concepts

When it concluded that the situation of MMIWG in Canada amounted to genocide, the National Inquiry directly implicated a reflection over the interconnection of gender, indigeneity, and genocide. In doing so, it performed a similar exercise as that done above, but in a more practical, strategic way accounting for the Canadian context. Following usual patterns of research and despite not having been mandated to find criminal or civil liability,¹⁹² the National Inquiry first endeavored to make binding conclusions based on its legal analysis.¹⁹³ Yet, recognizing some of its limitations at the legal level, the National Inquiry’s genocide conclusion also rested on more pragmatic political and sociological considerations. The following section examines both rationales.

A legal term...

Under purely legal considerations, linking genocide to the MMIWG question inferred strong implications that another term would not. The binding obligations required of Canada in this case, outlined previously in this paper, impart on the state a necessity to reconsider and legally reframe its relationship with Indigenous peoples, especially IWG. The distinctive gendered aspect of the MMIWG issue, as unraveled by the National Inquiry, further implied that the perspectives of IWG and gender-based approaches should chiefly inform state thinking in addressing genocide. In fact, failing to account for gender can have dramatic consequences, as Ashraph articulates in explaining that “gender-blindness affords space

¹⁹¹ Ibid.

¹⁹² Government of Canada, *Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women*, (2016) schedule p. For the full terms, see Annex I.

¹⁹³ See a summary in Annex II.

for equivocation, and for retreat from the legal obligations of the [state]”¹⁹⁴ and has the further repercussion that “female victims are denied equal protection of the law.”¹⁹⁵

In addition to a necessary reflection over the gender elements brought forth by the MMIWG issue in connection to genocide, indigeneity is also carefully navigated in the National Inquiry’s genocidal findings. In fact, it connects gender and indigeneity in the context of genocide by assessing the key patterns of gendered genocidal conduct aiming to disrupt Indigenous identity, especially for IWG, acts which typically involve a direct attempt at reducing the number of Indigenous people able to claim this identity, and therefore claim belonging to Indigenous communities.¹⁹⁶ The gendered effects of residential schools and the Indian Act were particularly relevant, here, for the National Inquiry.

Understanding that “genocide is principally a crime of intent, not one of scale,”¹⁹⁷ the National Inquiry supported its legal findings with primarily qualitative data, relying on testimonials collected through trauma-informed community and expert hearings. This follows what a former government employee shared in an interview, stating: “If I think of the way international criminal judgements deal with genocide, it isn’t really a numbers game, generally. It’s more about a general intent. Patterns are discernable not just based on numbers. You can identify patterns of behavior without necessarily knowing the exact number of people that these patterns of behavior affect.”¹⁹⁸ Therefore, the National Inquiry inferred, from its qualitative data, genocidal patterns, informed by gendered and Indigenous perspectives, applicable to the legal definition of genocide.

In capitalizing on the legal definition, with its *jus cogens* status and its binding requirements for action, the National Inquiry was further able to not only call for direct measures ending genocide, but also to call for the tackling of systemic issues allowed to survive by the Canadian government. In fact, “pre-existing structures that tolerate gender-based violence and gender inequality[, such as] pre-existing structures of patriarchy, gender domination, and violence[,] can contribute to genocidal violence against women and girls,”¹⁹⁹ a notion only magnified when also considering Indigenous elements and the influence of colonial legacy in contemporary Canadian legislation and policies. As such, relying on the legal definition of genocide and its application has allowed the National Inquiry to demand that the state

¹⁹⁴ Ashraph, 3.

¹⁹⁵ Ibid, 9.

¹⁹⁶ Marie Ralstin-Lewis, “The Continuing Struggle against Genocide: Indigenous Women’s Reproductive Rights,” *Wicazo Sa Review* 20, no. 1 (2005): 82.

¹⁹⁷ Ashraph, 10.

¹⁹⁸ Interview with a person whose identity is confidential, May 2, 2020. Transcription located in Annex IV.

¹⁹⁹ Ashraph, 48-49.

address the MMIWG issue in a holistic, gender- and Indigenous-informed manner through the implementation of measures addressing genocide directly, but also more covert modes of systemic and structural oppression.

... with sociological and political value

Nevertheless, the National Inquiry understood the shortcomings of its legal outlook, as it was not only limited by a mandate which prevented it from reaching binding conclusions, but it further faced the hurdle that legally charging Canada with genocide would be nearly impossible. In fact, to do so at the international level, as it principally involves state responsibility, a case would have to be brought against Canada by another state at the International Court of Justice, an unlikely outcome. At the domestic level, the Crimes Against Humanity and War Crimes Act does not entail state responsibility, as it merely aims to implement the Rome Statute related to the International Criminal Court, and Canada has only incorporated in its Criminal Code the first two wrongful acts identified by the Genocide Convention, namely killing and causing serious bodily or mental harm, such that acts which are seemingly more appropriate in the case of a Canadian genocide against Indigenous peoples, notably forcible transfer of children, are inapplicable.²⁰⁰

Yet, the MMIWG crisis was characterized as a genocide. Indeed, the value of using such a term goes well beyond the strict confines of legality. ‘Genocide,’ in the vernacular, has transcended its international conventional definition and has become associated with intrinsic moral and ethical values. Its use necessarily sparks a wide range of reactions at all levels of society, as illustrated by the Canadian and international responses, which ranged from full acceptance to deep criticism. As was shared in an interview, “The very fact that people [abroad] were talking about the report... was a big strategic decision because no one outside of Canada would have been reading that, probably, otherwise.”²⁰¹

Therefore, using the term ‘genocide’ has value beyond its legal definition due to its evolved significance among the general population. This broad understanding imparts upon the word further importance in that it be used as a means to recognize the suffering of a group. As David MacDonald contends, “[g]enocide recognition in the Canadian context [does] not necessarily reduce the pain felt by Survivors, but it [does] at least ‘reassure the survivors that the public is aware of the atrocities they suffered’.”²⁰² It

²⁰⁰ David B. MacDonald, “Canada’s history wars: indigenous genocide and public memory in the United States, Australia and Canada,” *Journal of Genocide Research* 17, no. 4 (2015): 421.

²⁰¹ Interview with a person whose identity is confidential, May 2, 2020. Transcription located in Annex IV.

²⁰² MacDonald, 420.

acknowledges and legitimizes the suffering and loss experienced by Indigenous peoples, especially IWG, in various spheres, including the socio-economic and cultural levels. The power of the term ‘genocide,’ and the pain it underlines, runs so deep, that the National Inquiry in fact intended to use the term from its very inception, even if originally restricted to ‘cultural’ genocide, as shared by Commissioner Audette:

The objective, from day one, when we [the commissioners] saw each other with our little post-it notes on September 1st, in Vancouver, as we told ourselves that it is [the legislation establishing the National Inquiry] six pages that are changing our lives; [we asked,] what are the results and conclusions that we would like to reach? And to reach them, what will be our methodology? Among all the themes, causes, and topics in play...we wrote down on a post-it note, all of us, ‘cultural genocide.’

[L]’objectif, dès le premier jour où on s’est vu avec nos petit post-its, le 1 septembre à Vancouver, on s’est dit, c’est 6 pages qui changent notre vie ; quels sont les résultats et les conclusions qu’on aimerait atteindre et pour les atteindre, quelle sera notre méthodologie ? Parmi tous les thèmes, les causes ou les sujets en jeu, violences spirituelles etc., on a mis sur un petit post-it, toute la gang, génocide culturel.²⁰³

Beyond mere acknowledgement, it is also essential to note, as Lindsey Kingston does, that for Indigenous peoples, and IWG especially, “the need to recognize and prevent cultural genocide is paired with the desire to heal – and thrive in spite of – past trauma.”²⁰⁴ There is therefore a transformative aspect to the inclusion of genocide in the discourse of settler oppression against indigenous peoples. This is further supported by the potential that genocide has in shifting key narratives that perpetuate harm against Indigenous peoples. In fact, “[Indigenous] peoples, due to the ongoing legacies of colonialism, are often blamed for problems that have their origins in settler government policies.”²⁰⁵ By reframing issues under the frame of genocide, the responsibility necessarily shifts back to state, to the real wrongdoer and agent of violence. The National Inquiry, in finding genocide, thus intentionally pointed the finger back at the state as Commissioner Audette explained:

...we accuse the state in our conclusion. We do not accuse McDonald or Dunkin, we accuse the state for maintaining this *status quo* which has resulted in mutilation, violence, suicide, drug addiction, mental health, sexual violence and all the other forms of violence we were asked to analyze, to study, being still too present in all Indigenous territories.

... The hope for me is that one day, no one can be able to pretend it does not exist here. That for me is one of the biggest victories, that you can no longer pretend, whether you like or not the words that we used. We did our job and now, we will honor the work that women are doing.

²⁰³ Interview with Michèle Audette, April 28, 2020. Transcription (in French) located in Annex III.

²⁰⁴ Kingston, 78.

²⁰⁵ MacDonald, 421.

...on accuse l'État dans notre conclusion. On accuse pas McDonald ou Dunkin, on accuse l'État de maintenir ce statu quo qui fait que la mutilation, la violence, le suicide, la toxicomanie, la santé mentale, la violence sexuelle et toutes les formes de violence qu'on nous a demandé d'analyser, d'étudier, sont encore trop présentes dans tous les territoire autochtones.

... L'espoir pour moi c'est qu'un jour personne puisse prétendre que ça existe pas ici, ça pour moi est une de mes plus grandes victoires, que tu ne puisses plus prétendre, que tu aimes ou pas les mots qu'on a utilisé. On a fait notre travail et maintenant on va honorer le travail que les femmes sont en train de faire.²⁰⁶

²⁰⁶ Interview with Michèle Audette, April 28, 2020. Transcription (in French) located in Annex III.

Conclusion

“It is time to call it as it is: Canada’s past and current colonial policies, actions and inactions toward Indigenous Peoples is genocide.”²⁰⁷ This was the daring conclusion drawn by the National Inquiry following its years of efforts examining the question of MMIWG in Canada.

After publication of the report, media attention focused largely on the conclusion of genocide. Commissioner Audette confirmed that using the word “genocide” in the report greatly contributed to the amount of attention it received;²⁰⁸ however, with that attention came criticism from a number of perspectives. Some journalists noted the disorganization of the Commission, and Evan Dyer of the Canadian Broadcasting Corporation (CBC) wrote of the numerous errors contained in the original edition of the report: “[A] number of statistics in the inquiry report [...] appear to conflict [...] with other numbers in the same report. In some cases, the inquiry report’s footnotes cite government reports that do not support the footnoted statements.”²⁰⁹ He adds that though the report was changed to remove these errors, the changes were not formally announced and the original report remains the official record.

Commentary on the disorganization of the Commission often accompanied criticism of the genocide conclusion. One common criticism was voiced most strongly by General Roméo Dallaire, the retired Canadian general who headed the United Nations Assistance Mission for Rwanda (UNAMIR) and witnessed the Rwandan genocide firsthand. He argued that it is difficult to prove any strong intent to destroy by the Canadian state, as opposed to ineptitude and neglect. He also compared it to his experience in Rwanda, and the dramatic difference in the level of violence. He stated, “I’m simply having a problem of going and leaping to an international convention on a definition of ... not only abuse of human rights, but mass atrocities and a deliberate aim by a government to destroy a society, to destroy an ethnicity, to eliminate it. That’s what I lived through. And that’s what I saw as a genocide.”²¹⁰

Others, such as journalists Rob Breakenridge and Chris Selley, argued that the use of the term genocide undermined the other conclusions of the report and impacted its credibility. According to Breakenridge, “the idea that genocide has happened in this country is not something that most Canadians are likely to

²⁰⁷ Canada, National Inquiry into Murdered and Missing Indigenous Women and Girls, *A Legal Analysis of Genocide* (2019), 26.

²⁰⁸ Interview with Michèle Audette, April 28, 2020. Transcription (in French) located in Annex III.

²⁰⁹ Evan Dyer, “MMIWG Final Report Quietly Altered after CBC Inquired about Errors,” *CBCnews, CBC/Radio Canada*, September 3, 2019, <https://www.cbc.ca/news/politics/missing-murdered-indigenous-women-inquiry-statistics-1.5176756>.

²¹⁰ Evan Dyer, “What Does It Mean to Call Canada’s Treatment of Indigenous Women a ‘Genocide’?,” *CBCnews, CBC/Radio Canada*, June 5, 2019, <https://www.cbc.ca/news/politics/indigenous-missing-murdered-women-genocide-trudeau-1.5162541>.

accept. That may also mean that otherwise-sensible observations and recommendations made by those simultaneously touting the genocide claim will be disregarded.”²¹¹ This is a common argument in situations of oppression or marginalization: how to make things palatable enough to the majority while still highlighting the extent of the issue? It remains salient in this situation; however, it could be argued that, given the government will be the institution enacting the recommendations of the report, its acceptance of the conclusions (which Prime Minister Trudeau gave soon after its publication) are of most importance. In contrast to Breakenridge’s concern for the potential blowback undermining other valuable conclusions, Selley’s commentary is argumentative, and bewildered by what he considers a “ridiculous” conclusion, given the lack of possibility for accountability: “just because you’re accusing a person or entity of a novel kind of genocide doesn’t mean you aren’t accusing them of something that needs answering for. It’s a big word for a reason.”²¹²

Despite these criticisms, few would argue that the work done by the Commission was not valuable. Its methods aside, its conclusions do well to highlight the issue. This paper has attempted to contextualize some of its conclusions, namely that of genocide, through a post-colonial, gender-, and Indigenous-conscious lens. It epistemologically and sociologically examined the categorization and essentialization of Indigenous people in general, and IWG in particular, before linking this notion to the National Inquiry and its gender-based findings and to a theoretical discussion of the concept of genocide. The latter further developed the applicability of genocide to the question of MMIWG in Canada by analyzing the legal foundations and boundaries of the concept as well as the intersectionality of gender, indigeneity, and genocide in their reciprocal influencing of one another. Throughout this paper, high consideration was given for the Canadian historical context of colonialism, continuously emphasizing the long-lasting effects on Indigenous peoples of settler policies, most importantly genocide.

Ultimately, the genocide conclusion will stand through history: as Commissioner Audette mentioned, it creates a precedent for the future relations between the Canadian state and Indigenous peoples.²¹³ However, despite the length of the National Inquiry’s final report, some questions remain unanswered, at both theoretical and practical scales: What is the impact of using the term ‘genocide’ in a colonialist context? Does it tip the scales of international interpretation of genocide? What is the advocacy value of

²¹¹ Rob Breakenridge, “COMMENTARY: Use of the Word ‘Genocide’ Undermines the MMIWG Report,” *Global News*, June 8, 2019, <https://globalnews.ca/news/5366507/mmiwg-genocide-debate/>.

²¹² Chris Selley, “Somehow, the Missing and Murdered Indigenous Women Inquiry Just Got Worse,” *National Post*, September 5, 2019, <https://nationalpost.com/opinion/chris-selley-somehow-the-missing-indigenous-women-inquiry-just-got-worse>.

²¹³ Interview with Michèle Audette, April 28, 2020. Transcription (in French) located in Annex III.

such a choice? Is there a future for the MMIWG issue at a time when the Canadian state is likely to prioritize a number of other emergency situations? Is there a future for a similar issue in another country, which could rely on the National Inquiry as a steppingstone? This paper has aimed to contribute to the discourse around some of these questions, but others will rely on time's tide to be further illuminated.

Annex I – Terms of Reference for the National Inquiry²¹⁴

“Whereas the high number of deaths and disappearances of Indigenous women and girls in Canada is an ongoing national tragedy that must be brought to an end;

Whereas the Government of Canada has committed to launching an inquiry to identify and examine the systemic causes of violence against Indigenous women and girls in Canada and to make recommendations for effective action;

And whereas the Government of Canada is committed to taking effective action to prevent and eliminate violence against Indigenous women and girls in Canada;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Prime Minister, directs that a commission ("the Commission") do issue, for the period beginning on September 1, 2016 and ending on December 31, 2018, under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing five persons as commissioners ("the Commissioners"), namely, the Honourable Marion R. Buller as Chief Commissioner, Michèle Taïna Audette, E. Qajaq Robinson, Marilyn Poitras and Brian Eyolfson, to conduct an inquiry into missing and murdered Indigenous women and girls in Canada, which Commission must

- a. direct the Commissioners to inquire into and to report on the following:
 - i. systemic causes of all forms of violence — including sexual violence — against Indigenous women and girls in Canada, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of Indigenous women and girls in Canada, and
 - ii. institutional policies and practices implemented in response to violence experienced by Indigenous women and girls in Canada, including the identification and examination of practices that have been effective in reducing violence and increasing safety
- b. direct the Commissioners to make recommendations on the following:
 - i. concrete and effective action that can be taken to remove systemic causes of violence and to increase the safety of Indigenous women and girls in Canada, and
 - ii. ways to honour and commemorate the missing and murdered Indigenous women and girls in Canada;
- c. direct the Commissioners to conduct the inquiry under the name of the National Inquiry into Missing and Murdered Indigenous Women and Girls ("the Inquiry");
- d. authorize the Commissioners to adopt any procedures that they consider expedient for the proper conduct of the Inquiry, to sit at the times and in the places, especially in Indigenous communities in Canada, that the Commissioners consider appropriate and to conduct the Inquiry, to the greatest

²¹⁴ Government of Canada, 2016. *Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women*. Accessible at <https://www.mmiwg-ffada.ca/wp-content/uploads/2018/06/terms-of-reference.pdf>

extent possible, by means of informal processes such as the gathering of statements by qualified trauma-informed persons to record the experiences of families of missing and murdered Indigenous women and girls and survivors of violence against Indigenous women and girls participating in the Inquiry;

e. direct the Commissioners to take into account, in conducting the Inquiry, that the Inquiry process is intended, to the extent possible,

i. to be trauma-informed and respect the persons, families and communities concerned,

ii. to provide an opportunity for persons, families and community members to express and share their experiences and views, particularly on ways to increase safety and prevent and eliminate violence against Indigenous women and girls in Canada,

iii. to be culturally appropriate and to acknowledge, respect and honour the diverse cultural, linguistic and spiritual traditions of Indigenous peoples, and

iv. to promote and advance reconciliation and to contribute to public awareness about the causes of and solutions for ending violence experienced by Indigenous women and girls in Canada;

f. authorize the Commissioners to provide any person having a substantial and direct interest in the subject matter of the Inquiry with an opportunity to participate in the Inquiry;

g. authorize the Commissioners to establish

i. regional advisory bodies – composed of families of missing and murdered Indigenous women and girls and survivors of violence against Indigenous women and girls – to advise on regional matters that fall within the scope of the Inquiry, and

ii. issue-specific advisory bodies – composed of elders, youth, families of missing and murdered Indigenous women and girls and survivors of violence against Indigenous women and girls, experts and academics, including academics specializing in Indigenous legal traditions, as well as representatives of national, Indigenous, local and feminist organizations – to advise on regional matters that fall within the scope of the Inquiry;

h. direct the Commissioners to conduct the Inquiry as they consider appropriate with respect to accepting as conclusive or giving due weight to the findings of fact set out in relevant reports, studies, research and examinations, whether national or international, including

i. the Final Report of the Truth and Reconciliation Commission of Canada (2015),

ii. The Report of the Royal Commission on Aboriginal Peoples (1996),

iii. Invisible Women: A Call to Action – A Report on Missing and Murdered Indigenous Women in Canada, Report of the Special Committee on Violence Against Indigenous Women (2014),

iv. Missing and Murdered Aboriginal Women: A National Operational Overview, Royal Canadian Mounted Police (2014),

v. What Their Stories Tell Us: Research findings from the Sisters In Spirit initiative, Native Women's Association of Canada (2010),

- vi. Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (30 March 2015),
- vii. Missing and Murdered Indigenous Women in British Columbia, Canada, Inter-American Commission on Human Rights (21 December 2014), and
- viii. reports of the Missing Women Commission of Inquiry (Oppal Commission, British Columbia);
- i. direct the Commissioners to review the results of the Government of Canada's pre-Inquiry engagement process;
- j. authorize the Commissioners to rent, in accordance with the applicable Treasury Board policies, any space and facilities that are required for the purposes of the Inquiry;
- k. authorize the Commissioners to recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting the rates of remuneration and reimbursement and the assessment of accounts, to any person described in paragraph (f), where in the Commissioners' view the person would not otherwise be able to participate in the Inquiry;
- l. authorize the Commissioners to make available to members of the families of missing and murdered Indigenous women and girls and to survivors of violence against Indigenous women and girls, for the duration of their appearance before the Commission, the trauma-informed and culturally appropriate counselling services that the Commissioners consider appropriate;
- m. authorize the Commissioners to refer the families of missing and murdered Indigenous women and girls and survivors of violence against Indigenous women and girls who contact the Commission for information and assistance with respect to matters such as ongoing or past investigations, prosecutions or inquests to the appropriate provincial or territorial authority that is responsible for the provision of victim services;
- n. direct the Commissioners to use the electronic data systems and procedures specified by the Privy Council Office and to consult with records management officials within the Privy Council Office on the use of standards and systems that are specifically designed for the purpose of managing records;
- o. authorize the Commissioners to engage the services of the experts and other persons who are referred to in section 11 of the *Inquiries Act*, at the rates of remuneration and reimbursement that the Treasury Board approves;
- p. direct the Commissioners to perform their duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization;
- q. direct the Commissioners to perform their duties in such a way as to ensure that the conduct of the Inquiry does not jeopardize any ongoing criminal investigation or criminal proceeding;
- r. if the Commissioners have reasonable grounds to believe that any information obtained in the course of the Inquiry may be used in the investigation or prosecution of an offence under the Criminal Code, authorize the Commissioners to remit that information to the appropriate authorities;

- s. authorize the Commissioners to remit to the appropriate authorities any information that was obtained in the course of the Inquiry that the Commissioners have reasonable grounds to believe relates to misconduct;
- t. direct the Commissioners to follow established security procedures, including the requirements of the Government of Canada's security policies, directives, standards and guidelines, with respect to persons engaged under section 11 of the *Inquiries Act* and the handling of information at all stages of the Inquiry;
- u. direct the Commissioners to not disclose publicly or in any report any personal information, as defined in section 3 of the *Privacy Act*, that has been received in evidence during any portion of the Inquiry conducted in camera, unless, in the opinion of the Commissioners, the public interest in the disclosure outweighs any invasion of privacy that could result from the disclosure;
- v. direct the Commissioners to make any disclosure referred to in paragraph (u) in such a way as to minimize, to the greatest extent possible, any invasion of privacy that could result from the disclosure;
- w. direct the Commissioners, in respect of any portion of the Inquiry conducted in public, to ensure that members of the public can, simultaneously in both official languages, communicate with and obtain services from the Commission, including any transcripts of proceedings that have been made available to the public;
- x. direct the Commissioners to submit, simultaneously in both official languages, the following reports to the Governor in Council:
 - i. an interim report, to be submitted before November 1, 2017, setting out the Commissioners' preliminary findings and recommendations, and their views on and assessment of any previous examination, investigation and report that they consider relevant to the Inquiry, and
 - ii. a final report, to be submitted before November 1, 2018, setting out the Commissioners' findings and recommendations; and
- y. direct the Commissioners to file the records and papers of the Inquiry with the Clerk of the Privy Council as soon as feasible after the conclusion of the Inquiry.”

Annex II – Summary of the Inquiry’s supplemental report on genocide²¹⁵

The supplemental report on genocide discusses the concept of ‘genocide’ and outlines the Inquiry’s rationale and legal argumentation for finding that the decades-long mistreatment of IWG amounts to genocide. It begins by recalling the principle conclusion drawn by the Inquiry, namely:

The violence the National Inquiry heard about amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQIA people. This genocide has been empowered by colonial structures, evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.²¹⁶

The supplemental report further highlights the Inquiry’s examination of the persistence of colonial structures and policies in Canada as a root cause of the violence experienced by IWG and a reinforcer of the existence of acts of genocide, before diving into the analysis of genocide through a discussion of the definition of genocide, Canada’s genocidal conduct (*actus reus*) and special intent (*mens rea*), and Canada’s responsibility for genocide and obligations for reparations. It is important to note that the supplemental report clearly states that it:

does not intend to fully demonstrate all the elements of a genocidal policy, since [the Inquiry] does not have direct access to all of the evidence related to it. However, the information and testimonies collected by the National Inquiry provide serious reasons to believe that Canada’s past and current policies, omissions, and actions toward First Nations Peoples, Inuit and Métis amount to genocide, in breach of Canada’s international obligations, triggering its responsibility under international law.²¹⁷

Defining genocide

In examining the definition of genocide, the supplemental report relies on the prohibition of genocide as provided by law and primarily discusses international treaties and customary international law, as well as the integration of those concepts within Canadian domestic law, citing the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), various international standards developed through international court decisions, and the Canadian *Crimes Against Humanity and War Crimes Act* (2000). Importantly, the international definition gives rise to both individual criminal

²¹⁵ Canada, National Inquiry into Murdered and Missing Indigenous Women and Girls, *A Legal Analysis of Genocide* (2019).

²¹⁶ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, Volume 1a*, 50.

²¹⁷ Canada, National Inquiry into Murdered and Missing Indigenous Women and Girls, *A Legal Analysis of Genocide* (2019), 2.

responsibility and state responsibility, though “little precedent in international law for situations where the state is the perpetrator of genocide through structural violence, such as colonialism.”²¹⁸

The analysis then turns to the historical foundations of the term ‘genocide’, accounting for the evolution from Raphael Lemkin’s development of the term to the eventual adoption of the UN Convention mentioned above, with an emphasis on the fact that throughout the process, Indigenous and gender perspectives were largely dismissed or ignored – which notably led to the exclusion of ‘cultural genocide’ from the official text of the Convention. Moreover, the dynamics of application and interpretation that surrounded the notion of genocide during the 20th century resulted in a primary focus on the individual responsibility inferred in the view of genocide as a crime. As such, “[c]olonialism is a unique form of violence that does not fit easily in the international legal definition of the *crime* of genocide”²¹⁹ as colonial policies can hardly be pinpointed to a single individual.

Going further, the supplemental report identifies three elements that distinguish colonial genocide, namely: 1) the nature: often non-lethal and aimed at obliterating a people through assimilation or absorption into dominant culture; 2) the temporal and geographic scope: a slow-moving, centuries-long phenomenon with no clear start or end date and fluctuations over time and space; and 3) the ideological drive, often closely linked to racism. In underlining these factors, the supplemental report sought to make clear the “insidious and gradual nature of the obliteration of Indigenous peoples, and the lack of a uniform national policy spearheaded by a totalitarian mastermind, [that] differentiate colonial genocide from our traditional understanding of what constitutes a genocide.”²²⁰ Linking it to the Inquiry’s work, it further states that: “[t]hese distinguishing factors have, unfortunately, allowed the Canadian consciousness to dismiss Canada’s colonial policies as racist and misconceived, rather than acknowledge them as explicitly genocidal and, even, ongoing.”²²¹

Beyond colonialist concepts, the supplemental report also addresses the gender facet of genocide, highlighting that this lens is often missing from genocide considerations, despite some of the crucial elements it can bring to the understanding of genocide, and stating that “genocide encompasses a variety

²¹⁸ Ibid, 5. The supplemental report cited one example here: the ICJ decision in *Bosnia and Herzegovina v. Serbia and Montenegro* which created a precedent for an obligation on states *not to commit genocide*. It also cites art.4 of the draft articles for the *Responsibility of States for Internationally Wrongful Acts* (2001) text, which points to the fact that “acts of genocide perpetrated in application of the policies established and maintained by the Canadian state are attributable to Canada under the rules of customary international law.”

²¹⁹ Ibid, 9.

²²⁰ Ibid, 11.

²²¹ Ibid.

of both lethal and non-lethal acts, including acts of “slow death,” and all of these acts have very specific impacts on women and girls.”²²²

On the basis of the above analysis, the foundation for the Inquiry’s understanding of genocide in Canada as a “composite act”²²³ in breach of the state’s international obligations, the supplemental report then addresses more specifically the Canadian context.

Genocidal conduct and intent

The Canadian definition of genocide is highlighted as being separated into the elements of conduct (*actus reus*) and intent (*mens rea*):

The *actus reus* refers to the objective elements of the definition and comprises two elements: (1) the prohibited conduct enumerated in the definition (killing, causing serious bodily or mental harm, etc.); and (2) the existence of a protected group against whom the conduct is directed. The *mens rea* refers to the subjective elements of the definition and comprises a general intent to commit the prohibited conduct and a specific intent to destroy the protected group, in whole or in part.²²⁴

Unraveling this definition in parallel with the conclusions of the analysis discussed above, the supplemental report first discusses the *actus reus* element, diving deeper into the questions of genocidal conduct by examining the five prohibited acts (genocide by killing, serious bodily or mental harm, inflicting conditions of life meant to bring about physical destruction, imposing measures intended to prevent births within the group, and forced transfer of children from one group to another) and of protected groups by underlining the subjective nature of this concept and denoting that both perpetrator and victim perceptions need to be taken into account.

In the Canadian context, it is first clarified that the term ‘Indigenous peoples’ is used to represent collectively the greatly diverse non-settler peoples in Canada before arguing that, indeed, Indigenous peoples can be considered to constitute a protected group as “the conduct and policies of the Canadian government generally targeted Indigenous peoples as a whole and considered them as such.”²²⁵ Genocidal conduct is then examined beyond the scope of mass killing, the predominant act commonly discussed in genocide discourses, which the supplemental report characterizes as ‘belittl[ing] the complexity of genocidal violence and undermin[ing] its very definition, which includes both lethal and

²²² Ibid, 8.

²²³ Ibid, 9.

²²⁴ Ibid, 4.

²²⁵ Ibid, 13.

non-lethal methods of destruction.”²²⁶ Applying the three elements discussed above, and consistent with previous commissions established by the Canada, the supplemental report asserts that:

[G]enocidal acts permeate the thousands of testimonies heard by the National Inquiry in the course of its mandate.... Testimonies of survivors suggest that colonial structures and policies, “evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, [directly led] to the current increased rates of violence, death, and suicide in Indigenous populations.” In particular, truths heard by the National Inquiry shed light on “deaths of women in police custody; [Canada’s] failure to protect Indigenous women, girls, and 2SLGBTQIA people from exploitation and trafficking, as well as from known killers; the crisis of child welfare; physical, sexual, and mental abuse inflicted on Indigenous women and girls in state institutions; the denial of Status and membership for First Nations; the removal of children; forced relocation and its impacts; purposeful, chronic underfunding of essential human services; coerced sterilizations; and more.” The National Inquiry considers that those acts, in addition to numerous others and those mentioned below in the *mens rea* section, qualify as elements of the *actus reus* of genocide as defined above.²²⁷

Genocide goes beyond a list of actions, however, and the supplemental report continues its analysis by examining Canada’s specific intent to destroy indigenous people, or the state’s *mens rea*. It distinguishes between assessing individual criminal responsibility and intent for genocide, which centers around identifying an individual’s general intent to commit genocidal acts and specific intent to destroy a group in whole or in part, and demonstrating state intent, which is inherently policy-based. Citing jurisprudence from the International Court of Justice, the supplemental report rightfully admits the complexity involved in proving a state’s *mens rea* for genocide as it requires being able to point to manifest genocidal policies or patterns of conduct at the state level.

This is further complicated by the controversial nature of the scope required to find an intent to *destroy*. The Inquiry and the supplemental report take an inclusive approach, based on jurisprudence from the European Court of Human Rights and various International Criminal Tribunals, which accepts that destruction of a group can be demonstrated by proving the implementation of measures meant to disrupt a group as a social unit. In this way, a great number of insidious, non-physical and non-biological acts can be included in genocidal patterns of conduct, including the conventionally adopted act of forcibly removing children.

Once again applying theoretical discussions to practice, the supplemental reports stating that “Canada’s colonial history provides ample evidence of the existence of a genocidal policy, a “manifest pattern of

²²⁶ Ibid, 13-14.

²²⁷ Ibid, 17.

similar conduct”, which reflects an intention to destroy Indigenous peoples”²²⁸ and pointing to the very foundation of Canada as a state, which involved policies characterized here as ‘genocidal,’ and to the colonial legacies that have been perpetuated at the cost of Indigenous lives. It unequivocally finds, relying on a number of examples of colonial and contemporary policies, that “Canada, as a state, has exhibited the requisite *mens rea*. Canada has displayed a continuous policy, with shifting expressed motives but an ultimately steady intention, to destroy Indigenous peoples physically, biologically, and as social units, thereby fulfilling the required specific intent element.”²²⁹

Having arguably demonstrated Canada’s genocidal conduct and specific intent, the supplemental report concludes by discussing Canada’s responsibility for genocide and obligations for reparations. Relying on obligations to cease a wrongful act and to procure justice for past harmful actions, it maintains that:

Canada has breached its international obligations through a series of actions and omissions taken as a whole, and this breach will persist as long as genocidal acts continue to occur and destructive policies are maintained. Under international law, Canada has a duty to redress the harm it caused and to provide restitution, compensation and satisfaction to Indigenous peoples. But first and foremost, Canada’s violation of one of the most fundamental rules of international law necessitates an obligation of cessation: Canada must put an end to its perennial pattern of violence against and oppression of Indigenous peoples.²³⁰

²²⁸ Ibid, 24.

Annex III – Transcript of Interview 1

This interview was conducted with Michèle Audette, one of the former Commissioner of the National Inquiry, on April 28th, 2020. It was conducted in French and is therefore transcribed in the same language.

Q: Pour commencer, pourriez-vous nous parler un peu de votre profile et de la raison pour laquelle il vous a tenu à cœur de participer à l'enquête nationale sur la situation des femmes et filles autochtones disparues et assassinées (FFADA)?

Michèle Audette: Pour répondre brièvement à votre question, mon père est québécois et ma mère est Innu. Alors dès la naissance, l'amour va amener son lot de problèmes, systémique on s'entend, qui est une discrimination où toutes les femmes qui vont marier... toutes les femmes Innues, autochtones qui vont marier un non-autochtone sont automatiquement expulsées de leur communauté. Expulsées de façon radicale à certains endroits, physiquement et si non physiquement de façon aussi littérale... La violence latérale.

Alors dès ma naissance, on a arrêté un train pour trouver l'hôpital le plus près, en plein milieu du Québec, dans les épinettes, les sapins, les rivières et les lacs, en direction de Shefferville. Ils nous ont emmené d'urgence au Labrador et, après ma naissance alors que moi j'ai quelques heures, quelques jours, que je ne peux pas comprendre, ni voir, mais mon premier jour de vie on nous oblige à aller dans la section des 'sauvages' du train, du train qui est la seule façon de retourner à Shefferville qui est chez nous, mon premier chez-nous. Ma mère en tant qu'Innu est considérée comme sauvage donc on l'oblige à s'asseoir de ce côté-là tandis ce que mon père, bah, lui il avait le choix d'aller avec les sauvages ou avec les blancs, et non ma mère. La ségrégation existait chez nous aussi, malheureusement. Donc ça va être ma première expérience jusqu'à aujourd'hui où, parce que l'amour va amener son lot de problèmes mais aussi son lot de force, parce que...je dis merci à mes deux parents. Si je suis la personne que je suis aujourd'hui, c'est le cadeau qu'ils vont m'avoir fait.

Alors cette réalité-là, on va la goûter à tous les jours : on va vivre toujours en marge de la société Innu parce qu'on est rejetés, et du côté des Québécois à Montréal on va vivre une situation où on va penser que je suis une latino, une libanaise, ou quelqu'un qui vient des pays d'Amérique latine. Et aussitôt qu'on découvre que je suis, comme on disait à l'époque, 'indienne,' là, je deviens exotique. Alors du côté des autochtones, on est des 'vendus,' des 'sauvages,' des 'pas bons,' notre propre monde nous rejette. Et du côté montréalais, c'est comme " 'Ayoye,' j'ai vu une Indienne dans ma cour d'école". On parle ici des années 70-80.

C'est beaucoup plus tard que je réalise que mon implication avec le mouvement des femmes autochtones du Québec et du Canada va me donner le goût de cette quête pour une justice sociale. Ma mère est fondatrice de Femmes Autochtones du Québec avec d'autres femmes incroyables dans les années 70 et je vais poursuivre son chemin jusqu'à aujourd'hui. Donc c'est ce qui fait un peu ce pourquoi, depuis ma naissance jusqu'à mes 48 ans, j'ai besoin de faire ça. J'ai besoin de faire ça aussi pour ma petite famille, j'ai 5 enfants, puis deux petites filles, de trois ans bientôt et de dix mois! Même si avec le Covid on les voit de façon virtuelle. Alors ça ressemble à ça, un petit bout de chemin de notre parcours.

Q: Merci d'avoir partagé le début de votre histoire, on comprend pourquoi ça vous tenait vraiment à cœur. Est-ce que vous pouvez nous donner votre avis personnel sur pourquoi cette catégorie des FFADA,

aujourd'hui, se trouve vraiment au centre de la situation des peuples autochtones au Canada? C'est à dire qu'au final il y a évidemment d'autres questions, par exemple en Colombie Britannique des Wet'suwet'en et du territoire, mais c'est vrai qu'avec cette enquête on s'est vraiment concentré beaucoup sur cette question des FFADA, pourquoi?

MA: Bien avant, la tradition orale chez les Innus, comme chez bien d'autres Nations, pour avoir vécu dix mille ans, neuf mille ans, huit milles ans sur le grand territoire qu'on appelle maintenant l'Amérique, le Canada ou les Etats-Unis (mais on va rester ici-là dans le nord), va montrer qu'on était super bien organisés, tant dans nos sociétés, la gouvernance, que ce soit au sujet de la justice, de la sécurité auprès des gens, du maintien de notre culture... Donc on avait nos droits, nos lois, nos bases qui faisaient qu'on était des sociétés extrêmement bien organisées. Je le dis souvent là, mais on n'avait pas de Canada Goose il y a dix mille ans, il y a 600 ans, donc pouvoir vivre au milieu du Québec avec zéro technologie, contemporaine on s'entend, c'est qu'on avait et qu'on a une science connectée avec les astres, la nature, les animaux terrestres, aquatiques et les saisons. C'était une science, pour nous, naturelle.

Et entre les hommes et les femmes, le rôle était aussi bien défini, bien respecté, y compris du point de vue physique et spirituel: porteuse de vie pour les femmes, pourvoyeur et protecteur pour les hommes. Dans certaines Nations, les femmes vont avoir un rôle politique très, très fort pour déterminer quand est-ce qu'on commence et termine une guerre, quand est-ce qu'on va libérer des gens qui ont été pris d'un autre peuple, quand est-ce qu'on va se déplacer et à quel endroit on va aller et comment on va placer le campement. D'autres Nations vont avoir des rôles similaires, chez les femmes on s'entend. Nos hommes, chez les Innus, pouvaient partir trois ou quatre mois pour le gros gibier et entre femmes, on pouvait survivre tous ces mois-là avec le petit et le moyen gibier et prendre soin des personnes vulnérables ou de celles qui allaient donner la vie et ainsi de suite. Donc il y avait cet équilibre et cette compréhension-là.

Quand les gens venus d'ailleurs sont arrivés, le rôle de la femme n'était plus du tout, du tout considéré. On parle du colonialisme là, et ça, ça va être un impact de la violence coloniale, leur premier impact, et on en parle d'ailleurs dans l'enquête nationale dans le cas du Québec où c'est la première cause, la racine de pourquoi aujourd'hui, en 2020, on va retrouver des statistiques alarmantes au niveau de la violence et de la disparition envers les femmes autochtones. Donc là, ces gens-là viennent briser nos systèmes, nos façons de faire, et pour accélérer le processus on parle de coloniser de 1600 jusqu'à aujourd'hui. Surtout vers le Québec, mais jusque dans l'Ouest du Canada, on parle de coloniser ces 'sauvages,' ces 'barbares,' qui sont nous autres, ces Nations qui avaient une connaissance incroyable et quand on regarde, avec l'enquête, on va le remarquer clairement.

Pour ma part ça va être formateur cet exercice-là : on peut être Innue et Québécoise, mais à force de vivre les cinq sens au quotidien d'une culture, ça devient normal, au point qu'on va normaliser une violence, qu'on va normaliser une discrimination, qu'on va normaliser un système au point de penser que ce système est celui qui va me définir. Donc quand le Canada va s'installer, va définir tout ça, il va imposer des lois pour gérer et contrôler les sauvages, pour défaire les systèmes de société que nos Nations avaient placé entre les hommes et les femmes et là, d'entrée de jeu, on dit, "tu peux plus avoir ta place comme femme pour le territoire, pour la naissance, pour la politique, pour la culture, pour la langue, et pour tout ce que comporte une identité culturelle pour ta société et ton peuple".

Donc on vient de débalancer, d'emmener un déséquilibre et en plus une dépendance. Donc on va créer des écoles résidentielles un peu partout. On va forcer nos jeunes à aller là-bas et là, nos jeunes on va les

mettre entre garçons et entre femmes. Et au Québec, on a rencontré trois générations de gens qui vont vivre dans les écoles résidentielles ou qui vont vivre les effets des écoles résidentielles. On a là d'autres aspects du colonialisme, de la violence coloniale et de ces actions précises pour faire mal à des Nations, les diminuer, les affaiblir et les rendre dépendantes. C'est une façon de contrôler, d'exterminer, de faire disparaître.

Alors ça c'est, je vous dirai, pourquoi moi, quand je suis arrivée dans un contexte de féminisme autochtone et de femmes autochtones du Québec, je pensais que la violence est physique, je pensais que la disparition et l'assassinat chez les femmes autochtones c'était parce qu'on était vulnérable et qu'on vivait dans des endroits où le féminicide, pour le crime organisé, pour les groupes, ou pour la prostitution, ou pour l'industrie, tout ça, venait nous cibler alors que, en faisant mes devoirs avec cette enquête-là, qui a été fascinante et difficile en même temps, de voir que *tabarouette*. C'est là où vraiment j'ai été capable de dire "Ok. Génocide. Pas juste génocide culturel, mais génocide tout court" et on enlève le mot culturel pour arrêter d'être *politically correct*.

Alors longue réponse pour vous dire que la violence coloniale va être la première, première cause qui va ensuite venir défaire nos fondements de loi entre autochtones qui sont le respect, la réciprocité et l'interdépendance, qui, comme je vous ai dit, est entre les hommes et les femmes mais aussi avec la nature, l'environnement, les animaux, tout ce qui nous nourrit, nous guérit et nous fait vivre. Il y a une interdépendance, tout le temps, tout le temps. Donc ça va être les fondements de tout ça qui sont défaits, brisés, et aujourd'hui quand on regarde la crise des Wet'suwet'en, parmi les trois revendications, les gens vont dire "on ne veut pas de GRC" [Gendarmerie Royale du Canada]. Pour les Québécois à l'autre bout ici, c'est normal d'avoir une GRC quand il n'y a pas de police provinciale, alors que pour nous l'histoire nous dit que la GRC a été créé, expressément, pour enlever les enfants des communautés, des territoires. Alors cette police-là, aujourd'hui, existe encore mais avec un mandat beaucoup plus large. Mais pour la mémoire collective, on le sait, ça a été une oppression et une forme de génocide pour arracher les gens d'un milieu, pour les emmener dans un autre milieu, et c'est ça ma grande réponse.

Q: Pour revenir un peu sur ce concept d'interdépendance que vous avez mentionné, est-ce que vous pensez qu'en s'intéressant spécifiquement aux femmes et aux filles ça ne se fait pas au détriment d'une saisie plus large des difficultés auxquelles font face les peuples autochtones en général?

MA: Si ça n'avait été que moi, je pense que le Canada aurait dû avoir le courage de faire une enquête sur les disparitions, mais avec, on s'entend, avec des cellules bien précises sur ce qu'est le phénomène pour les femmes autochtones et ce qu'est le phénomène chez les hommes autochtones pour arriver avec des appels, ou on pourrait dire des recommandations, pour reprendre le terme général de la Commission, pour être sûrs que nos recommandations vont être appropriées pour les femmes et pour les hommes.

Ça a été très politisé, extrêmement politisé, comme enjeu cette enquête-là, l'"avant enquête". Donc pour le gouvernement, c'était difficile pour eux de dire "Ok on va aussi ajouter les hommes," pour une multitude de raisons que je vais désapprouver, mais ça c'est comme ça. Et puis d'ailleurs notre propre monde avait peur, et avec raison, que si on devenait une enquête qui ramasse tout, hommes et femmes (pas comme si on était des objets, là), mais que tous ces enjeux-là, avec le peu de temps, le peu d'effectif et puis le manque de volonté politique, on se serait retrouvés peut-être avec la communauté LGBT, où certains vont critiquer leur présence parce que ce sont des hommes devenus femmes et qu'ils font une certaine violence envers les femmes en prenant beaucoup de place au lieu des femmes lesbiennes, gays,

deux esprits et ainsi de suite. Alors ça, ça a été, derrière les rideaux, très, très difficile à gérer. L'aspect politique va faire que...

J'ai oublié de répondre à votre dernière question, pourquoi les femmes autochtones et les filles autochtones, mais on a un système qui vient déstabiliser, un État qui va nourrir ça de siècle en siècle, mais aussi dans nos propres communautés. Quand je parlais de normalisation où, là aussi, on va vivre une violence, pas seulement une violence physique mais aussi une violence sous toutes ses formes, une violence latérale, spirituelle et tout ça, où nos propres membres vont faire que les femmes ne sont pas une priorité et n'ont plus leur place dans le système décisionnel ou la gouvernance. On fait croire que, mais regardons les statistiques, elles sont frappantes : très peu de femmes chefs, très peu de femmes à la tête d'organisations, à la tête d'une communauté ou d'une Nation. À moins que ça ne touche l'aspect social, l'éducation, la santé, les services sociaux, ça c'est normal, même chez les Québécoises. Mais dans le cadre du développement économique, des femmes dans des positions qu'on a donné longtemps aux hommes, ou on a pris pour acquis que c'était pour les hommes, c'est beaucoup plus difficile.

Alors ça fait qu'il y a des femmes qui vont dire "je suis discriminée chez nous, et je suis discriminée à l'extérieur, donc l'enquête doit rester seulement pour les femmes autochtones," alors que d'autres, qui dans la communauté ou à l'extérieur vont avoir perdu un fils, ne comprenaient pas pourquoi on va séparer cette enquête-là et pourquoi on ne va pas écouter des parents ayant perdu un fils. Mine de rien, dépendamment des commissaires, on s'est organisé pour leur dire "Tu veux parler de ton fils, de la perte d'un être cher, si tu es à l'aise – c'est comme ça que je négociais avec eux autres – de venir me parler de comment le *système* a répondu à ta souffrance, à ta douleur, à ton besoin psychosocial, médical, etc... *name it* là, comme parent, c'est une forme de violence. Donc viens me voir." Donc il y a un faible pourcentage et puis comme je le disais ça dépendait des commissaires.

À la fin, je voyais tous mes autres collègues qui me disaient "Là elle me parle d'un garçon, d'un bébé garçon," puis je leur disais poliment "Écoute le comme une personne qui a vécu une forme de violence." Donc on parlait des survivants. Quand on regarde le décret [de référence pour l'ENFADDA], on parle de personnes, de familles, mais aussi de survivants et survivantes. C'est ce qui nous permettait, au Québec, d'entendre beaucoup de parents qui ont perdu des bébés, une fois malade puis qui ne reviennent jamais, puis c'est des bébés garçons, là. Alors c'est un peu détourné, on a joué avec le système, mais on n'en aura pas 14 des enquêtes comme ça là, donc on en a profité.

Q: Pour revenir sur la politisation, pourquoi cette enquête est-elle arrivée maintenant? Qu'est ce qui a poussé l'enquête à être ouverte par le gouvernement actuel? Nous avons aussi noté qu'elle a été relativement courte, c'est à dire que le mandat, au final, comparé à d'autres enquêtes, n'a pas eu forcément la même initiative, donc comment vous pouvez réconcilier tout ça?

MA: Pendant des décennies les femmes vont dénoncer sur toutes les tribunes les disparitions. Après ça, on va vivre de 2000 à 2006 une situation où le gouvernement Libéral, si je me souviens bien, avait une certaine ouverture et sensibilité pour financer des recherches, financer des initiatives qui sont autour de femmes et de parents qui ont perdu un être cher. Chez les femmes autochtones, parce que ce sont les mouvements de femmes qui vont pousser tout ça et dire, dénoncer les violences, les disparitions et ainsi de suite. Ensuite les Conservateurs vont arriver pendant presque...neuf ans de noirceur. Moi je l'ai trouvée noire en tout cas, cette période-là, où le discours va commencer à changer pour dire que c'est pas un problème systémique, mais un problème que les policiers vont régler. Puis c'est 'vous autres' les

agresseurs, c'est 'vous autres' les violeurs, puis réglez vos affaires entre 'vous autres' là, puis moi j'ai pas ce problème-là.

Moi, pendant ce temps-là je suis militante, je suis porte-parole à Femmes Autochtones du Québec, puis Femmes Autochtones du Canada et je suis assommée de voir comment monsieur Harper va – et puis ça c'est des personnes comme moi, vous avez juste à les multiplier par centaines et centaines et centaines – va envoyer une lettre au gouvernement de l'Inde suite à un viol collectif – un couple qui sort d'une salle de cinéma et dont la conjointe se fait violer par plusieurs hommes. Mr Harper va envoyer une lettre pour dire que c'est contre les droits de la personne, que c'est un crime haineux, que c'est un crime contre la personne, que c'est inacceptable alors qu'au même, même, *même* moment, dans son propre territoire, pays, en Ontario, à Thunder Bay, une femme dans la trentaine, en sortant de l'épicerie, se fait violer par deux hommes en plein hiver! Et les deux hommes pensent l'avoir tuée, vont la traiter de toutes sortes de noms, et lui disent carrément "T'es pas la première sauvage là, ni la dernière à qui on fait ça" puis la *pitch* dans un fossé, à -30 en plein hiver, en pensant qu'elle est décédée. Et elle revient chez elle, après tant d'heures, et Harper ne fait rien, ne dit rien, aucune lettre, aucun appel. Il y a une jeune fille qui va mettre fin à sa vie dans les Maritimes suite à de la cyberintimidation, où on va envoyer des photos d'elle ou, je sais pas qu'est qu'il y avait là, mais elle va se suicider et Harper se déplace, alors qu'on va vivre des situation similaires chez les autochtones et personne ne va rien faire. Donc ça vient avec beaucoup de rage chez les militants et militantes, moi de mon côté pour dire "Harper tu fais quoi là-bas mais avec nous autres, tu fais rien."

Alors ça s'est tellement politisé, les mouvements sont tellement organisés, les femmes sont puissantes, elles sont allées dans les rues, elles ont fait des marches, elles ont fait des manifestations par milliers, elles ont traversé le Canada neuf ans de suite pour aller à Ottawa sans arrêt, sont allées aux Nations Unies, à l'Organisation des États Américains, vont être partout à faire des pétitions... Et ça devient tellement puissant comme manifestation que tous les partis politique en 2015, lors de la campagne électorale, et surtout les Libéraux, vont en faire une promesse que s'ils deviennent le nouveau gouvernement, dans les 100 premiers jours, ils vont mettre en place une enquête. Donc ça vient calmer une population mixte d'autochtones et d'alliés parce que à ce moment-là, la France aussi s'intéresse à ça, le *New York Times* s'intéresse à ça, beaucoup de gens à travers le monde s'intéressent à ça : "Ah oui le Canada, il y a un féminicide?" Alors ça dérange et c'est ce qui fait que le NPD et les Libéraux disaient, le parti Vert aussi, que "si on rentre on fait une enquête." Et ils ont fait une enquête, mais dans un contexte politique qui *fit* dans le premier mandat d'un gouvernement, ne sachant pas s'ils allaient rentrer une deuxième fois.

Alors j'ai fait mon job. 'Mettons que c'est enrageant, parce que c'est historique et unique comme enquête et qu'on a l'opportunité, pour une fois, d'ouvrir, si vous êtes sensibles, pour une fois à ce genre d'enquête, 14 juridictions qui vont autorisés cinq commissaires à venir toquer et fouiller dans leurs archives, documents et dossiers. C'est du jamais vu, là. C'est pas juste une enquête fédérale où les gens vont venir toucher à la GRC ou à la police fédérale d'un territoire ou d'une autre province. C'est tout. 500 ans d'histoire. C'est tous les ministères, c'est tous les programmes, toutes les communautés. C'est toutes les Nations, les Métis et les Inuits. C'est tout le système institutionnel, les universités et les entreprises. Et on donne juste 26 mois pour faire un travail colossal. Et on les abandonne là, et puis tout le monde les critique en même temps et c'est difficile, mais on se dit que "on va le faire pareil." Donc je dirai que ça a été extrêmement politique et par moments, mais merci la vie, on est encore là.

Q: Mais du coup, justement, cette limitation de temps, puisqu'on sait qu'il y a eu cette demande d'extension de deux ans, qui au final n'a été que de 6 mois, quel a été son impact au niveau de ce que vous avez réussi à faire et à conclure? Il me semble que vous avez discuté du fait que le côté 'éducation' a dû être un peu mis de côté à cause de ça, est-ce que vous pouvez nous parler des objectifs que vous n'avez pu achever?

MA: L'impact que ça a eu c'est ce qu'on a été en mesure de... quand on nous a donné le mandat c'était un coup de téléphone et quand on reçoit plus tard le décret qui nous annonce ce qu'il en est, le lendemain on a annoncé. Donc tout ça est allé très vite, on avait pas accès au décret, on avait pas de réponses pour raison de confidentialité bla-bla-bla. On reçoit le décret par les journalistes et non par le gouvernement, et on voit que c'est un mandat gigantesque, immense, tous les territoires. On se donne rendez-vous, parce que le mandat est officiellement annoncé le 3 août, mais on commence le 1^{er} septembre. Donc on se donne rendez-vous le 1^{er} septembre et on se dit : comment on va repartir tout ça, ce grand territoire et toute cette tragédie-là, pour en arriver à découvrir les causes systémiques, les racines des causes systémiques, et proposer des pistes de solutions, de recommandations et ainsi de suite. Moi je pensais qu'on déménageait à Winnipeg, à Ottawa et qu'on allait arriver dans des bureaux. J'ai été d'une naïveté totale. C'est un bout de papier qui a changé ma vie et puis c'était ça, alors qu'en même temps que de faire une enquête il fallait mettre sur pied la commission d'enquête en elle-même.

Puis l'impact que ça a eu c'est que quand ça te prend 6 à 8 mois pour pouvoir mettre ton équipe sur pieds, on parle juste de ressources humaines, quelques ordinateurs, on a pas les bureaux encore, et on a pas encore le système informatique qui va hyper protéger pour empêcher toute institution ou personne *flyée* avec la technologie de venir fouiller nos archives qui sont numérisées. Ça a été une farce, un choc pour moi de penser que j'arriverai dans un système déjà en place. Non il fallait bâtir ça, et ça a pas été évident dans la négociation avec le gouvernement fédéral. Quand on dit indépendant, c'est pas vrai. C'est pas indépendant à 100%, mais pas du tout. On voulait créer des postes qui *fittaient* avec la culture autochtone, avec les Métis, les Inuits, les Premières Nations, les gens qui sont hors communauté, la communauté LGBT, la communauté qui parle juste français comme seconde langue... Il y a une diversité incroyable chez les peuples autochtones au Québec et au Canada... Et on pouvait même pas créer des postes, et ça a eu un impact. Et moi là, une famille comme moi, j'étais sûre que trois mois plus tard on allait commencer les commissions d'enquête, j'étais sûre, là! Mais ça a pris neuf mois.

Alors pendant ce temps là l'impact que ça a chez les gens qui ont attendu 40 ans, 20 ans, 10 ans, ou 6 mois et qui se font dire que la Commission va enquêter "sur ton cas," alors que c'est pas ça, ça porte sur les causes systémiques, on était pas des policiers ni des enquêteurs. Notre silence, puis le manque de temps pour faire la pédagogie comme vous l'avez mentionné, c'était ça l'autre impact majeur, majeur, *majeur* qui va toujours rester pour moi dans mon cœur... Je ne veux plus dire une déception, [c'est] que j'ai envie de vivre et je ne veux pas être malheureuse, mais on va entendre des milliers de familles, on va bâtir nos questions pour les institutions, mais le manque de temps fait qu'on est pas capable de faire une enquête par province. Ça c'est majeur, c'est majeur et c'est politique! Ils nous font croire qu'ils vont soutenir l'enquête nationale, tous les gouvernements, mais quand c'était le temps d'aller les enquêter, là ils tirent le *plug* puis ils disent "non, non, non, moi je donne pas d'extension mais pas du tout" et ça nous empêche de questionner la sûreté du Québec, de la ville de Vancouver, des endroits où on a entendu ou vu des choses.

Ça pour moi, ça a été un impact majeur, de pas pouvoir questionner nos propres institutions autochtones. Par manque de temps, de pas pouvoir aller dans les institutions fédérales de façon organisée. On est allé, mais on a pas pu faire des audiences dans les milieux carcéraux et ainsi de suite... Alors le temps va avoir enlevé tout ça, mais en même temps nos mentors, moi j'avais une ex-commissaire mentor qui m'a dit "fais ton maximum avec ce que t'es capable..."

Puis pour répondre à votre question, l'objectif, dès le premier jour où on s'est vu avec nos petit post-its, le 1 septembre à Vancouver, on s'est dit, c'est 6 pages qui changent notre vie; quels sont les résultats et les conclusions qu'on aimerait atteindre et pour les atteindre, quelle sera notre méthodologie? Parmi tous les thèmes, les causes ou les sujets en jeu, violences spirituelles etc., on a mis sur un petit post-it, toute la gang, 'génocide culturel.'

Culturel, c'était normal de dire "génocide culturel," même moi j'avais acheté ça. J'étais contre le génocide quand c'est sorti avec la Commission Vérité et Réconciliation, mais aujourd'hui je comprends ça veut dire quoi un génocide. Alors on a mis ce petit post-it là et pour y arriver, on a bâti nos entrevues, nos questions, les profils de gens qui sont venus s'inscrire, on s'est adapté et c'est ce qui fait qu'après ça, moi, je me suis retournée et comme je suis la seule qui n'est pas avocate avec mes collègues les commissaires, qui eux sont tous des avocats de formation, juges aussi – et moi j'ai même pas de diplôme universitaire, là.

Donc je me retourne et je vais voir des expertes en droit, qui sont madame Harbeau et madame Fanny Lafontaine. Et je demande à Fanny: "Bon, toi t'as travaillé sur des commissions sur le génocide, tu as déjà fait des choses. Peux-tu m'aider, si tu as accès aux preuves de démontrer que "****", c'est plus qu'un génocide culturel au Québec? On a violé des femmes parce qu'elles sont autochtones, on a ciblé ces femmes parce qu'elles sont autochtones, on les a stérilisées parce qu'elles sont autochtones, on les a mises vulnérables dans des situations si inacceptables qu'elles se sont auto-mutilées, suicidées, ou *maganée* de la vie; ou on va avoir enlevé une famille complète d'un territoire, ou on va l'avoir appauvrie, on va l'avoir affamée, on va l'avoir *maganée* puis violée en plus, puis là elle se drogue aujourd'hui. C'est tout ce qu'on voit sur la définition de l'ONU, sur ce que c'est qu'un génocide. Fanny aide moi, moi je suis pas avocate." Puis Fanny, elle m'a dit "Oué, calme toi. Génocide [au] Canada c'est fort là, c'est fort Michèle, parce qu'il faut que tu le prouves." Et puis je m'obstinais, je m'obstinais parce que c'est mon coeur qui parlait.

Elle a fouillé nos preuves, elle a fouillé notre rapport avec son équipe et ils sont revenus avec l'analyse, là, sur le génocide, qui est beaucoup plus percutante que les petits mots que je vous dis. C'est comme ça, moi, [que] j'ai pu dire à mes collègues "culturel, faut qu'ils débarquent là," alors qu'eux autres c'est des avocats et ils avaient déjà tout dans leurs réflexions. Ils savaient comment le débattre ou le défendre, mais pas moi. Alors ça a été ça.

Et pour terminer, je dirai que je le savais, je le savais, que ça allait couler et puis je l'ai dit à mes collègues qui sont loin de la pédagogie, qui sont loin de l'éducation populaire ou de parler dans les médias. Ils ont dit "bah non, ça coulera pas." Les cinq commissaires, ils les ont fait couler, le gouvernement, pour tester dans la société s'ils aiment les cinq commissaires, parce qu'on était cinq avant. Je leur ai dit "c'est comme ça le gouvernement, c'est comme ça un système: on va tester et après ça, ça permet aux gens de préparer des lignes puis des messages qu'ils vont couler" et comme de fait, ils ont coulé notre rapport avant la remise officielle. Puis ils ont vu que quand on a remis notre rapport, le génocide avait déjà fait sa réaction

à travers le monde, mais ce qui est intéressant c'est que t'as un rapporteur spécial, t'as les Hauts Commissaires, t'as des gens aux Nations Unis, à la commission interaméricaine qui vont réagir par rapport à ça et puis t'es comme: "yeah, les femmes ont réussi à faire bouger une planète au complet."

Q: Une des choses qui nous a frappé dès la première lecture du rapport c'est la méthode très qualitative qui a été choisie par l'enquête, notamment le choix de s'appuyer sur des audiences communautaires comme première source d'information, ce qui est très loin de ce qu'on a l'habitude de voir avec des analyses de statistiques plus pures et dures. On se demandait donc, dans un premier temps, pourquoi ce choix ? Et dans un second temps, pensez-vous que cette méthode a eu un impact sur le type et la nature des données que vous avez collectées, ainsi que sur les analyses qui en ont découlé ?

MA: Oui, depuis toujours, de façon naturelle, la parole fait partie de nos modes de gouvernance. Peu importe le monde chez les peuples autochtones, la tradition orale va toujours être celle qui va transmettre. On écrivait pas à l'époque, on avait pas la technologie! Donc parler va être quelque chose d'important et que l'on doit honorer. Le colonialisme, l'impact que cette violence-là a eu sur les peuples autochtones et surtout les femmes, va nous amener à avoir peur de cette prise de parole. Mais cette parole qu'on va reprendre au fil du temps est un vecteur de guérison hallucinant, elle va guérir beaucoup, beaucoup de gens dans nos Nations, sûrement à travers la planète aussi. Alors je vais rester avec mes sœurs autochtones là-dessus.

Puis avec mes collègues qui sont avocats, eux ont été habitués à vivre une culture de droit de telle manière, mais ont été assez courageux pour penser *outside the box*, sortir de cette boîte pour justement se rapprocher des valeurs Innus, Atikamekw, et des autres Nations à travers le Canada; d'aller vers cette guérison qui est ce qui a fait que les femmes ont revendiqué cette enquête pour raconter leur histoire. Beaucoup de gens nous ont dit, "je veux raconter mon histoire," et à partir de là, avec les avocats, ça a été un beau défi de leur dire: "vous allez pas prendre la preuve comme on y est habitué dans un tribunal, ou dans une commission plus traditionnelle." Nous allons l'organiser comme étant qu'elles se sentent comme si elles étaient dans un cercle de partage, dans une tente, dans un *sweat*, dans un lieu culturellement sécuritaire. Je veux que sa parole devienne la preuve, je veux que son objet, son chant, sa paire de bas ou de mocassins qui appartenait au bébé, deviennent sa preuve et que nous, comme commissaires, en vertu des lois et des règles, nous allons devoir, si nous avons le nombre, le corum, plus la structure qui nous oblige à suivre ce système, le *twister* pour faire en sorte que notre approche soit comme ça. Alors des œuvres, des chants, des poèmes, beaucoup d'objets vont nous être donnés comme étant une preuve.

Ça aussi, ça va innover dans le monde de la commission d'enquête, tellement on va innover. Et pour nous c'était pas tant innover parce qu'en dehors d'une commission, c'est ça nos cercles de parole, quand je m'en vais dans mon *sweat lodge* puis que c'est moi qui a la plume, ou la roche, ou le bâton, c'est là où je donne ma souffrance pour faire place au bien-être. Alors c'est ce qu'on a essayé de recréer. Mais c'est frappant, vous voyez, la différence. Moi ça m'a choqué, mais aussitôt qu'on est tombé dans les audiences institutionnelles, on est devenu *fret*, carré, très tribunal. Très, très, très tribunal. On avait des tables, tous les avocats ont repris leurs vieilles cultures. Et puis c'est correct, hein, c'est comme ça, mais quand on était avec les familles, on avait poussé nos chaises. Ils nous ont fait plaisir pour cette partie-là, alors l'autre partie j'ai lâché prise. Mais c'est le petit côté cocasse de notre façon de travailler.

Ensuite ce qui va être très, très percutant, je pense, c'est qu'on voit, avec la commission qui voit le jour au Québec, que la commission vient reprendre les mêmes méthodes de travail avec les familles, va décider de rendre ça plus chaleureux lorsqu'on est avec les familles. Mais reste que le contexte plus traditionnel du tribunal revient assez vite. Alors monsieur Vien va avoir changé un peu grâce à ce que cinq commissaires autochtones vont avoir proposé comme démarche et ça pour moi, on s'est fait dire par certains gens de ce genre de milieu là, "merci d'avoir essayé de changer quelque chose qui était très rigide."

Q: Au final, c'était plutôt positif cette innovation ?

MA: Oui. Pour ma part, oui.

Q: Au sujet des audiences communautaires, mais aussi des audiences avec les gardiens du savoir et les experts, on s'est demandé comment avaient été choisis les lieux où elles se sont tenues et aussi, étant donné l'immensité du territoire canadien, comment avez-vous assuré un accès égalitaire aux audiences et comment est-ce qu'elles ont été annoncées au sein des communautés?

MA: Ok, pour ce qui est de ça, ça a toujours été important pour nous qu'on reçoive une invitation. Donc les gens du milieu, et quand on dit "du milieu" on peut avoir différentes Nations et différents groupes, donc là c'est pas juste une Nation. Si on sait à Vancouver, par exemple, qu'il y a trois Nations, il va falloir être sûr qu'on respecte les trois protocoles de ces Nations-là. Il fallait être sûr qu'on respecte ceux et celles qui se sont installés dans cette grande région-là et qui sont des leaders naturels et organisés. Donc on voyait là, dans la création des postes où je disais qu'on a eu beaucoup de difficulté, nos responsables de la santé communautaire d'aller voir qui sont ces leaders et, une fois qu'on reçoit une invitation, pour être sûrs qu'on respecte tous ces protocoles et ensemble on nous proposait des lieux. Des fois on va avoir choisi un hôtel, puis on va nous dire de plus jamais aller là, parce que cet hôtel-là... Alors pour ne pas faire ce genre d'erreur on travaillait avec les gens du milieu. Des fois c'était en accéléré, des fois on avait le temps de respirer – ce qui était rare, mais agréable. Deux jours de plus pour nous, c'était comme un mois de travail. Alors ça, c'était important.

Une fois qu'on convenait du lieu on faisait les annonces, avec les annonces déjà on avait des familles inscrites via le site web. Jamais on est allé dire à quelqu'un "viens témoigner toi, je sais que t'as une histoire à raconter." Fallait que ça vienne des gens, et les gens allaient sur le site web. Si les gens étaient pas capables, grâce à nos responsables des *help community* et de la santé qui sont eux connectés avec les réseaux qui existaient. Sur place, d'un endroit à l'autre, il fallait être très, très flexible et c'était pas juste une approche. Il fallait être hyper hybride dans nos façons de faire et les annonces étaient virtuelles, via les réseaux sociaux, via les partenaires sur le territoire, que ce soit le gouvernement, les centres, les maisons d'hébergement, tout ce qui existe dans les endroits où on allait. Malheureusement, ça va avoir été les villes qui ont été visitées le plus. C'est surtout dans des villes qu'on va aller faire les audiences. C'était important pour nous de choisir une audience qui était dans le Nord quand on a commencé, donc on l'a fait au Yukon C'était important pour nous car on a tendance à toujours commencer à Ottawa, Winnipeg, Vancouver, etc...et de terminer avec le Nord.

Q: Pour revenir sur l'aspect statistique et qualitatif, on a remarqué, comme ça a été souligné dans plusieurs rapports, que les données statistiques sur les disparitions et les assassinats des femmes et filles

autochtones au Canada sont relativement datées et peu solides; quelle raison, selon vous, pour ce manque de données?

MA: Je ne pourrai pas vous dire à l'heure actuelle pourquoi on a plus ces données-là, mais je peux vous dire par contre que nous, on a pas voulu faire de statistiques par manque de ressources. Avoir eu la capacité d'avoir des cellules bien précises d'équipes pour des statistiques à jour pendant l'enquête, on aurait beaucoup apprécié d'avoir une équipe, une cellule spécialisée pour enquêter. Je vous ai dit plus tôt qu'il y a des gens qui ont dit aux familles que la Commission allait ouvrir leur dossier, ce qu'on avait pas comme mandat. Par contre on a essayé de dire au gouvernement qu'on voulait créer un comité d'experts pour leur envoyer ça à eux pour qu'ils fassent le travail d'enquêteur de police, etc... et de voir avec eux les statistiques, puis les données, etc. Mais ça a été refusé. Donc, pour ce qui est du mandat de l'enquête, malheureusement on a pas été capable, ou plutôt on a fait un choix de mettre l'énergie dans les audiences et non dans la donnée pure à chaque mois au niveau des disparitions et des assassinats. C'est sûr que c'est pas quelque chose à laquelle on a aimé dire non.

Politiquement, de 2006 à 2010, ce que moi je peux témoigner en tant que femme impliquée avec Femmes Autochtones du Canada, c'est qu'on va être en mesure, par une recherche qualitative et quantitative de démontrer qu'il y a au-delà de 580 cas de disparition et on raconte aussi l'histoire de ces personnes-là, leur milieu, leurs aspirations, etc. Le gouvernement fédéral va alors couper ce programme de Femmes Autochtones du Canada, sous prétexte qu'ils vont financer un centre national pour les personnes disparues. Et là, ils ne veulent pas non plus mettre la petite case importante "autochtone." Alors ce que ça donne : dans les début 2000, Amnesty International démontre qu'il y a 180 cas; Femmes Autochtones du Canada, de 2005 à 2010, démontre que c'est au-delà de 580 et quelques cas; puis, il y en avait plus, et là, quelques mois (ou pas longtemps) après, il y a cette chercheuse universitaire qui démontre que 800 cas sont là. Plus on devenait scientifiquement organisé, plus malheureusement les chiffres allaient exploser.

La GRC s'obstine alors avec nous autres, et je leur demande de venir prendre une tasse de thé avec moi et je leur dit "faites la même chose que nous, si vous pensez qu'il n'y a que 380 cas d'homicides ou de disparition, vous êtes dans le champ", et le directeur de la GRC nous a demandé ce qu'on avait fait de différent d'eux autres. On appelé les 300 corps policiers un par un, il y a pas juste la GRC au Canada. Et il y a un an, jour pour jour, je reçois un appel de la GRC pour me dire "Michèle, on fait l'appel demain et c'est 1181 cas." Quand j'ai eu accès au document, j'ai été un peu frappée, c'était comme si on essayait de démontrer que les homicides, et n'oublions pas c'était le gouvernement Harper qui était là, c'était les hommes autochtones qui avaient fait la plupart de ces cas-là. Jouer avec les statistiques parfois peut être intéressant pour qui va pousser le crayon derrière l'exercice.

Cette même journée là, pendant l'annonce officielle, je suis avec ma mère à Radio Canada, et je dois réagir en ligne ouverte sur les données à Ottawa et mon cellulaire sonne constamment. Ma mère prend le message et elle revient, tout affolée, et c'est notre cousine. Notre petite cousine de 12 ans qui a été enlevée par deux jeunes Québécois ici, dans la ville. Et là, la panique. On arrête l'émission, je suis complètement déboussolée et c'est les familles qui vont m'aider en privé, m'informer sur le protocole quand quelqu'un disparaît et sur les questions qu'on doit avoir. Elles ont été incroyables pour me soutenir et deux jours plus tard on a retrouvé ma nièce. Puis la police a porté charge contre les deux garçons qui l'ont complètement brisé. Elle est une survivante aujourd'hui alors tout ça, en même temps, fait que je

deviens très enragée. Il en faut une enquête parce que ça peut arriver à n'importe qui, même dans ta propre famille.

La statistique, je dirai, quand le gouvernement a créé ce centre national et a coupé l'argent, il sait là. Alors moi je leur dit : “vous venez d'enlever une coche hyper importante qui va vous donner un beau chiffre annuel aux Nations Unies qui montre qu'il y a moins de disparition autochtones, mais vous l'avez effacé de la donnée. On n'existe plus. Donc on pourra plus prouver qu'au lieu de diminuer, vous avez joué avec les chiffres. Peut-être que ça diminue, mais vous avez continué à collecter des données de polices pour nous prouver que c'est nous autres qui tuent notre monde.” C'est pas sain. Alors avec l'enquête moi, même si je l'ai jamais dit, mais je croyais pas à monter une banque de donnée si on avait pas tous les outils. Il faut qu'elle soit transparente et sincère, pas juste ciblée pour nous montrer que c'est juste nous-autres qui tuent nous-autres, mais qu'elle ramasse *toutes* les données, puis que nos experts, après ça, puissent nous dire “oui en effet le taux est plus élevé là-bas” et ainsi de suite.

Et pourquoi je suis contre les statistiques aussi, même si elles sont importantes pour une politicienne comme moi, mais dans ce contexte-là, à la fin, on avait déjà déposé le rapport et il y a un journaliste tout fin qui m'appelle et qui me dit “*you won't like me, I'm gonna do something not nice to you. I respect you Michèle, but this is what i saw bla-bla-bla*, avec les statistiques.” Puis moi, je lui dit “t'es donc bien *cute* là, je sais même pas qui t'es, t'es *cute* de me dire ça. Je vais t'aimer pareil, mais je vais m'obstiner contre toi, pareil.” Lui il avait pris juste les données de Statistiques Canada, disant qu'il y a tant de disparitions alors que nous, on avait pas peur de dire il y a 11%, 20% de violences faites aux femmes autochtones. Et pourquoi? Parce que quand on va dans une communauté, on a pas besoin d'être un scientifique ou un expert en statistiques: tu rentres dans une classe, tu dis au professeur d'après toi les cas de violence physique ou sexuelles, peux-tu me dire ton pourcentage? Bah le professeur va me dire “ici t'en a 100%,” “ici t'en a 80%, tous mes élèves sont *poquées* ou *maganées*.”

Fait que Statistiques Canada, qui va te dire 5% et qu'après ça tu t'en vas sur le terrain puis que t'as écouté 2000 personnes qui viennent du terrain, tu te dis “regarde là, Statistiques Canada. T'es dans le champs, tu prends juste un échantillon de gens qui vont accepter d'aller te voir,” ça aussi il faut considérer ça. Puis quand tu regardes les données policières qui étaient pas faites par des vrais policiers à une certaine époque, tu leur dit “t'as combien de cas de violence conjugales? Juste 2?” [C'est] parce qu'il ont été judiciairisé, mais quand tu vas dans la maison d'hébergement, tout ceux qui ont pas été voir la police, t'en as peut être 400 dans l'année. C'est pour ça que quand on fait de la statistique, il faut des experts qui comprennent le milieu autochtone, puis ce sera pas juste une source, mais une multi-source de données qui doit être collectée.

Q: Selon vous quels sont les changements qui pourraient être apportés, très concrètement, à différents niveaux, pour accomplir les appels à la justice de l'enquête vis à vis une standardisation de la collecte de ces données?

MA: Je pense qu'il faut mettre plusieurs experts autour d'une même table, y mettre les femmes aussi, qui sont devenues des expertes de cette tragédie-là, malheureusement; que ce soit pas juste le milieu académique ou scientifique, statistique comme on connaît, mais de pouvoir dessiner ensemble et mettre en place sur une planche à dessin à quoi ça pourrait ressembler. Et on a des organisations autochtones qui veulent avoir le contrôle de leurs statistiques, mais même eux-autres j'essaie de leur envoyer un message positif en leur disant qu'il faut pas avoir peur non plus d'inclure nos expertes et nos experts qui

sont ceux qui vont avoir vécu la situation pour nous amener une autre lunette. De pas juste nous emmener le standard et ainsi de suite.

Pour ce qui est des appels à la justice, il faut absolument qu'il y ait une volonté politique fédérale, parce qu'on a pas les moyens de s'auto-financer. C'est pas le désir qui manque, mais on l'a pas, on est pas des gouvernements autonomes, malheureusement. Donc cette volonté politique qui pourrait faire en sorte que dans la façon dont on va travailler, dans la façon dont on va lutter contre ça, dans la façon dont on va le promouvoir etc... La volonté politique accepte, comme en ce moment avec le Covid, où on le voit comment le gouvernement fédéral est flexible avec les communautés. Le gouvernement, il a été rigide avec l'enquête nationale, mais on était pas en situation de crise. Là, on est en situation de crise et il est plus flexible mais d'après moi il va redevenir rigide comme avant parce que c'est tellement ancré dans la culture. Ça pour moi, le *statu quo*, c'est ce qui fait le plus mal, et le manque de participation de nos expertes c'est ce qu'il manque dans le projet aujourd'hui.

Q: Pour revenir sur les conclusions génocidaires de cette enquête, qui est devenu le mot d'ordre après sa publication, vous avez parlé déjà du fait que le génocide culturel est devenu un génocide 'tout court' et de comment vous avez décidé d'attaquer cette question-là. Sur un point peut-être technique, est ce que vous pouvez nous parler du fait que le génocide, qui est la destruction méthodique d'un groupe, ici les peuples autochtones au Canada, est ici concentrée sur le féminicide des femmes et des filles autochtones ? Comment vous avez décidé de quand même arriver à cette conclusion de génocide de toute la culture autochtone au Canada sur la base d'une analyse et de témoignage de femmes et filles autochtones disparues et assassinées ?

MA: Je dirai que c'est comme les écoles résidentielles. Lorsqu'on a entendu, quand le Canada a entendu tous ces témoignages de gens qui y ont vécu et après on va nous arriver avec un rapport qui amène 94 appels à l'action, si je me souviens bien du nombre, où je suis agréablement surprise, même si c'est sur le dos d'une tragédie, de voir que les gens parlent aux médias et aux universitaires dans leurs appels, qu'ils parlent au secteur privé et ainsi de suite, et je me disais que j'étais pas capable de *connect the dots* et d'attacher tout ça. J'étais trop en train de vivre la problématique comme survivante moi-même. Eux-autres, ce rapport-là, venait me déstabiliser en me disant que c'est vrai. Puis plusieurs parties prenantes et acteurs doivent changer alors que pourtant on parlait des écoles résidentielles, juste des écoles, et quand on est arrivé avec l'enquête, je me demandais par où on allait pouvoir commencer. Donc quand on a fait l'exercice avec les post-it, c'était malade comment on en avait des *dots* à couvrir.

Je dirai que c'était anormal, difficile pour moi, car je l'avais trop pris comme une violence où je vois pas que cette dernière a une histoire tellement... qu'elle est rendue ancrée dans l'ADN d'un peuple. Après ça, quand on est arrivé au mot génocide, au début, debut, génocide culturel, j'ai dit à mes collègues "moi, génocide culturel, j'ai eu de la difficulté à l'accepter." Parce que mon fils, mon plus vieux, il va se faire garder par Asota, Asota qui vient du Rwanda et qui s'est sauvée du Rwanda après s'être cachée plusieurs jours en dessous des corps de gens de son peuple, puis une fois que les autres sont partis, a été capable de se sauver. Et ça, pour moi, c'était le génocide. Je me disais pourquoi là, parce qu'on va dans une école résidentielle? J'avais jamais fait l'exercice à 360°, la vue d'ensemble, sphérique. J'avais jamais fait cet exercice-là et c'est arrivé tard dans ma vie. Puis, avec l'enquête, j'écoutais des témoignages et c'était poignant, ils avaient tous des écoles résidentielles, ils avaient tous la loi sur les indiens, ils avaient tous

la dépossession du territoire, et chaque perle se rejoignait. Que ce soit au Yukon ou à l'île du Prince Édouard, ou au Labrador ou à Winnipeg, il y avait toujours la même perle qui est la violence coloniale.

A partir de là ça a commencé à jouer beaucoup sur mon moral et mon spirituel parce que quand je revenais après une semaine (j'avais une semaine à Québec puis une semaine à travers le Canada), je revenais toujours déboussolée. Quand je revenais juste une semaine, voir ma famille et mes enfants, parce que visuellement j'avais défilé l'histoire de chaque personne, à chaque fois qu'elle parlait, et les cinq sens c'était comme si j'étais là et je pouvais pas croire qu'on a accepté, collectivement, nous et le Canada, la façon dont on a traité les gens. Des fois ça monte ici, parce que je sais que c'est encore là et c'est là où pour moi, mon *chum* m'a emmené une fois dans une communauté au Québec, qui est à trois heures, peut-être un peu moins d'Ottawa. Et certaines maisons n'ont pas d'électricité, d'eau courante, elles se chauffent à l'huile, des vitres brisées, beaucoup de violence et la misère – collée à Ottawa. Et j'ai dit "Serge on a ça au Canada! On a ça ici, puis on prétend être un des meilleurs pays! On prétend être super fort en matière de droits humains, de droit de la personne, et de justice sociale et de charte Canadienne, de constitution! Et mes frères et sœurs ici à Inchinabe vivent dans la misère totale!"

Puis là, après ça, je réalise que c'est aussi chez les Innu, que c'est aussi chez les Atikamekw, que c'est aussi chez certaines Nations pas loin de Montréal et pas loin de Québec, alors pour moi c'est l'État. Parce qu'on accuse l'État dans notre conclusion. On accuse pas McDonald ou Dunkin, on accuse l'État de maintenir ce *statu quo* qui fait que la mutilation, la violence, le suicide, la toxicomanie, la santé mentale, la violence sexuelle et toutes les formes de violence qu'on nous a demandé d'analyser, d'étudier, sont encore trop présentes dans tous les territoire autochtones. Alors des fois je pleure.

Q: La publication du rapport a évidemment porté l'attention et les critiques sur l'utilisation du mot génocide. D'après vous, l'utilisation de ce mot très fort a-t-elle eu une influence plutôt positive en augmentant la visibilité du rapport [rires] ou, au contraire, ça c'est fait en faisant perdre de vue la violence systémique vécue par les femmes et les filles autochtones, voire les femmes autochtones en général? Un an après, qu'est ce qui reste de l'impact de cette enquête?

MA: Ecoutez, mes collègues les commissaires, lorsque je leur disais que ça allait couler, à chaque fois qu'il y a quelque chose qui passait dans les médias, ils devenaient très, très émotifs, parce que c'était comme un échec pour eux-mêmes. Des fois, je leur disais "ça nous permet de nous recentrer, de nous réajuster, mais faut rester *focus* sur l'objectif. Vous êtes des bons mentors, mais là-dessus, faites-moi confiance, faut juste être solide si ça sort."

Avant que ça sorte, j'ai dit à mon père, Québécois, que l'une des conclusions allait être le génocide. Il s'est fâché après moi. Il y a eu des larmes et puis il a eu tout de suite, comme d'autres personnes, une réaction qui était "Mais Michèle, tu peux pas dire ça, pas toi, tu vas perdre toute ta crédibilité. T'as gagné une crédibilité et maintenant les gens croiront plus en toi, va pas là Michèle." Alors il y a eu une protection, j'imagine, de gens autour de moi qui m'ont dit de pas aller là, mais ma mentor m'a dit "Michèle si c'est là que tu vas, attaches ta tuque, tu vas te faire écorcher, tu vas te faire attaquer, mais moi j'ai confiance et tu dois avoir de bonnes raisons de penser que c'est ça, ça t'appartient." Je vous jure que par moments, mes collègues étaient prêts à tirer le *plug* du mot génocide et je les ramenaient toujours à l'ordre et je suis allée chercher nos expertes juristes et avocates en droit international et en droit de l'homme pour venir attacher dans un jargon d'avocat, dans un jargon de droit de la personne, dans un jargon qui va aider le milieu académique chercheurs et juridiques de débarquer.

J'expliquais à mon père "Gilles, je suis pas là pour plaire, sinon j'aurai fait autre chose dans ma vie." J'avais pas le choix de faire beaucoup de choses, mais je pense que ma vie, à date, m'a donné plein de beaux cadeaux, comme ce mandat, et je vais aller jusqu'au bout, et si les gens sont fâchés c'est bon signe, c'est parce qu'on les dérange et dans 20 ans, ils se rappelleront même plus que l'enquête était désorganisée, qu'il y a eu des démissions, des congédiements, un roulement de personnel, qu'on était pas crédibles, et vont juste utiliser notre enquête pour augmenter leur arguments, leur justifications et ainsi de suite, par rapport au génocide. Parce qu'on va donner des outils pour élever le débat et la communauté scientifique et juridique.

Ça a pas pris 20 ans: ça a pris tout de suite. Les cours de l'Alberta et du Saskatchewan vont utiliser le rapport, pour défendre les dossiers des enjeux liés au territoire, liés à des droits, liés à des femmes, qui sont pas juste sur des disparitions, mais sur bien des choses. On a des gens qui l'ont déjà utilisé dans des écoles, les universités, pour élever le discours. Et puis notre mouvement de femmes à travers le Canada ont maintenant un outil qui est fondé sur des fondements juridiques et légaux et humains. Alors pour moi ils se sont obstinés. J'ai entendu un Québécois l'autre fois qui est venu me voir, un ancien collègue anthropologue, et il me dit "moi j'aime pas ton mot génocide" et je lui ai dit "Pierre, moi non plus je l'aime pas, mais viens chez nous. Tes cinq sens, je suis pas sûre qu'ils te la feraient comme ceux et celles qui sont encore chez nous, eux-autres savent même pas que c'est un génocide, mais je peux te dire qu'ils sont écœurés de survivre de cette façon, ils ont pas tes privilèges." Et c'est un Québécois qui a jamais manqué de rien dans sa vie, qui n'a pas connu ça, alors qu'il va avoir fait sa carrière sur nous-autres.

Alors c'est sûr que des gens vont peut-être m'enlever les petites plumes que j'ai ou que j'avais, et d'autres vont dire ok, elle nous a aidé à élever un discours et une réflexion.

Q: Pour conclure sur une note d'espérance on va dire : où voyez-vous le futur des femmes et des filles autochtones disparues et assassinées, après cette enquête? Nous sommes un an plus tard, le futur est ouvert, est-ce que vous avez encore l'inspiration de vouloir travailler pour vos sœurs autochtones?

MA: Ce que je vous dis, c'est qu'il y a des gens qui ont commencé un processus de guérison suite à l'exercice de cette enquête. D'autres gens vont être beaucoup plus brisés, pour être sincère, pour quelques personnes ça été *tough*, je parle de chez les employés, là, d'écouter tous ces traumatismes. Alors je nous envoie de l'espoir à chaque jour et le futur avec ce qui se passe. Il y a eu des élections tout de suite après l'enquête, donc ça a été difficile pour nous de pouvoir nous mobiliser, de pouvoir digérer cet exercice collectivement. Les élections n'ont presque pas parlé de l'enquête, très peu, ça a été une élection donc ça a 'pfff' [son d'évaporation]. Et là il y a eu la crise à Wet'suwet'en et à travers le Canada et puis le Covid, donc on a comme, pas eu de moment.

Alors je dirai qu'une fois que le Covid va être passé et que le gouvernement va reprendre son cours et son exercice démocratique, j'espère sincèrement que les milieux vont redonner vie à cette enquête-là. Je le vois au milieu universitaire, on fait beaucoup de parallèles avec la Commission de Vérité et Réconciliation, mais j'aimerais qu'on fasse aussi un parallèle avec celui des femmes, et je suis patiente.

L'espoir pour moi c'est qu'un jour personne puisse prétendre que ça existe pas ici, ça pour moi est une de mes plus grandes victoires, que tu ne puisses plus prétendre, que tu aimes ou pas les mots qu'on a utilisé. On a fait notre travail et maintenant on va honorer le travail que les femmes sont en train de faire. Et voilà.

Annex IV – Transcript of Interview 2

This interview was conducted with a person who worked on the governmental side of the Inquiry process, on May 2nd, 2020. They requested that their identity remain confidential. As such their name is not mentioned and certain pieces of the interview have been redacted before inclusion in this paper.

Q: Before we begin, can you introduce yourself briefly and tell us a bit about your background and what led you to work on the topic of MMIWG?

A: I'm from the West Coast of Canada and it's a part of the country where there aren't treaties at all, so all territory there is unceded Indigenous territories and I think in some ways there's more openness, generally, or understanding of challenges with settler relations in that part of Canada. I grew up in a town, kind of a working class town, where it's not a super wealthy town and the particularly poor part of the town is the Indian reserve (which is of course the Canadian language, still, for that type of land) and you actually had to drive through the Indian reserve to get to my high school. So just something that's been very present in that a lot of students in our school were Indigenous and despite being a really poor neighborhood and a really under-resourced school, there was a separate program for Indigenous students. I'm not Indigenous, my family is second generation, I'm second generation or first generation settler depending on which side of the family, but it was such an interesting thing: as a white student in that school to understand that there was a separate program for Indigenous students where they were learning a different history and different language. It was never something that was included in a general curriculum. So you'd think if you were getting an accurate version of history, you would want all students to get that version of history.

So that kind of peaked my interest in Indigenous studies, so I did a little bit of coursework in Indigenous studies in undergrad, and then that led me to doing some research on residential schools in the West coast of Canada. Some of the results of that research, some of the things found, were absolutely horrifying - the things that were obviously happening in those schools. And a lot more of the kind of, like, forced sterilization and different elements that could tie in a bit with the genocide question. And then from undergrad, I knew I wanted to go to law school, but I needed to work for a year because I needed some money before going back to school. I ended working at a law firm back in my hometown.

The IAP, Independent Assessment Process - I don't know if you have heard of that, but it's part of the residential school settlement agreement in Canada, it's the litigation replacement, effectively from that settlement; another component of the settlement was the Truth and Reconciliation Commission. The Independent Assessment Process, basically, was a way of taking all these abuse claims out of the court system into a more appropriate system where people would be sensitized on the types of issues that would be arising from residential schools. So I spent a year in a law firm, I was the kind of paralegal/legal assistant, working on residential school claims. So it was all cases of either severe physical violence or sexual violence experienced by our clients in residential schools. That year was just a full year of really, really... It was a big learning year for me because it's where I first really, even after the Indigenous studies, started to piece together just, like, how complex the issue is and how just, like, intergenerational trauma really is and how that has impacts on what's happening in the future.

So I spent a year doing that then went to law school. From law school, [redacted].

Q: Moving on to the core of this interview, let's start with a general question: what do you think prompted the government to finally open this Inquiry and to look into this issue?

A: The advocacy in Indigenous communities for this type of inquiry has been going on since like the 1980s, so it was a long time coming and obviously, for governments like the Harper government, that was not going to be a priority, even though there was the settlement at the time for residential schools. I think, genuinely, and this is my genuine opinion as a person who is very critical of most things to do with politics, I think that Trudeau was the difference and I think that he genuinely does care about these issues. I know it's a weird thing to say about a politician 'honestly caring' about an issue like that, but I think it was a genuine desire to try and find a way forward in the country that was embodying reconciliation. I think he saw that as an essential step.

Q: The other side of that coin is the fact that, even though this was opened, it was given a broad mandate but a very short timeline, especially compared to other commissions. How would you reconcile those two elements, especially taking into account the electoral cycle - the publication of the report having been so close to the next election?

A: That's really interesting. There's some complicated stuff to unpack in there from my perspective, because when you think about what this Inquiry was, it is a formal national inquiry, right? I think the first one ever in Canadian history where there was buy-in from all of the provinces and territories, as well as the federal level, so all of the enabling legislation for that type of thing was passed through every single province, and it means that you have buy-in across the board right now. I think strategically, to then have an inquiry that's going to last five years, you really risk losing buy-in from the provinces, especially, or frankly you do risk having an election, so there's a political element. If you have an election and then another party comes in, they can completely defund the Inquiry, or something. So, I actually think the time limited thing was strategic in that way, but I also think it's a response to a genuine understanding about the limits of inquiries, as well.

First of all, there is the TRC - oh my goodness, incredible work, they did such incredible work in that the final report is a goldmine in terms of its value in pulling together historical things, but also its value in recommending really pragmatic steps moving forward. Nonetheless, when you're looking at the government level at implementing those types of recommendations, a lot of them are... I mean, there's been huge work done in the federal government for implementing the recommendations actually, but it's very challenging to approach it from starting at ground zero and then [having] hundreds of things to implement.

So I think one of the ideas with this Inquiry, and this is probably the result of speaking between government and communities that were affected, is the idea that it's not just about... So much has been done on this issue in a lot of ways. Generally, you look through the literature, you know what the root causes are already, it's very obvious that this issue stems from every aspect of how the Canadian government has dealt with - which is a horrible way to put it - but, has messed up relations with Indigenous communities. There's health implications, there's police implications, justice centers, everything. So I think the idea was: there has actually been, probably in the 5 to 10 years leading up to the Commission, there had been a lot of really positive steps taken at the community level and at the government level that were really needing review, so that good steps that had been taken could be

potentially advocated for or supported in this, and that is then going to allow those things to get more funding.

So I think that the idea was, it's a really broad mandate because it has to be, because you can't capture the MMIW issue at all without having that broad base of looking at the causes, but I think it was narrow strategically as well to keep it focused on pragmatic steps, instead of kind of general recommendations of "improving relations between". I think the idea, at least for people who drafted the Terms of Reference, was that they wanted the commissioners to also look into the programming that exists and say that: "this stuff isn't working, this stuff is working," so that right when it was done, instead of needing this 10-year process of implementing hundreds of recommendations, you could cut the fat and get right to supporting projects of programs that are working and tackling the core issues.

Pretty long way to answer, but I think that's my view on it at least.

Q: There is a second point that we wanted to touch on, in relation to the mandate. Why do you think that this specific question, of MMIWG, was chosen by the government as the Indigenous question to focus on though this inquiry? Do you think that, like you said before, it was truly just a desire to tackle this particular issue? Or is it also, in some ways, a way to deal with Indigenous questions without tackling the more complicated ones, like land rights?

[Redacted]

Q: Going back to the National Inquiry, you've already answered this a little bit, but what would you say were the specific objectives of the Inquiry and its scope, from the governmental perspective? What was the government's perspective of its role during the Inquiry?

A: I think that the Terms of Reference explain what the government intended this Inquiry to be about. It intended it to be in some ways historical, so helping draw the lines of why is it that the moment colonial powers landed here to now, what has that trajectory been and why is the situation now actually intimately tied to the fact that Indigenous peoples were dispossessed of land continuously since the 17,1600s. So, I think it's that tracing of the arc of it, to place previous and contemporary government behavior in that arc. But then again, I think the main aspect is wanting tangible, actionable ways of moving forward to address the issue, in a way that isn't just the government sitting down and saying "this is what we need". In a way that is driven, in whatever way it could be, by Indigenous communities.

Honestly to me that also gets to one of the issues with the Inquiry structure and that is, it's this tension between... The decision to make it an official inquiry gives it immense symbolic value, for sure, and it also gives it a sense of authority, which it should have because it's such an important issue. The issue is that making it an official inquiry also makes it a technical, legal process, with an act that governs what the Commissioners can and can't do, and detailed regulations about how money can be released to the inquiry from the government. So, it is an independent inquiry, but there's still money that was set aside by the government. So what happens then - I can't remember if it's in the Premier Council office or the budget or whatever it is - there's this wall that's effectively set up around a group of individuals working for the government who then have the full autonomy of giving the money when the proper documents come in and all that stuff, so that there's no political interference there.

But what it means is that - and I know this was the bane of the Commissioners' existence - money was coming slowly because they were slow to set procedures up and by the time the procedure was set up

they thought “OK you hand the document and a week later you get the resource.” But it’s a bureaucratic government inquiry, that’s not how the legislation works at all. So it’s interesting because, I think, when this was being set up, there were some people within the government who were actually pushing for it to not be a legal inquiry in the same sense, which would also have given it a lot more flexibility in terms of how that mandate was used and in terms of what the hearings looked like.

But the Commissioners did an amazing job within the guidelines that they had, but it could have been a lot more... I probably would have a different opinion than Commissioner Audette on some elements of what they did, but ultimately they were still operating within the confines of the fact that you have parties in this Commission because the government is being implicated. Therefore, the government has standing before the Commission, you know what I mean? So all these technical, legal things come in, but in some ways take away from the ability to make sure that it’s truly a community-owned process. So, there’s all that tensions there, too.

Q: Can you follow-up with more details regarding the role of the government in protecting that standing and the job of the legal team? We also have a very technical question about the Terms of Reference: Schedule P outlined that the Inquiry was not to implicate civilly or criminally any individual or group. Would you say that that was set up with the intention of protecting against any serious conclusions aimed at Canada or any person within the government of Canada?

A: I don’t know. I’ll go with that [second question] first, because I don’t know since I actually don’t know what the Terms of Reference look like for other commissions. So, I’m not sure if that’s an abnormal thing or not. There are commissions that are obviously set up specifically to have findings of liability. But I don’t know if that type of finding is supported by the style of inquiry it was. You can’t do...that would have further made it a technical, legal process, if you want to be able to infer liability, attribute liability to someone. That would mean you actually do need to allow the parties with standing to cross-examine witness, and can you imagine what that would look like? If there is a family member of a victim who is saying “the police did this,” then if you want the Commission to be able to make a technical finding or attribution of liability on the State, that police would then have to be up there to cross-examine the witness, which would fully take it away from a trauma-informed approach and all these other issues. So, I don’t know, it probably would have been inappropriate to have set the commission in a way that allowed attribution of that type of liability. Maybe that’s what it should have been, I don’t know, it just would have looked very different. And then it would have been longer too, because you would have had rights of reply, all that stuff.

[On the government’s role.] I don’t know as much about that technical, walled off part of the government that dealt with the Inquiry. My knowledge is more based on... So when... This same process was probably happening in all the provinces and territories, where you just... Once your province or the federal government is involved in an inquiry, you have a team that’s set up to manage what’s the government relation to that body and responses - because again, they were parties with standing and it’s not in a traditional way but the provinces and territories had standing before the Commission and obviously many NGOs and that type of thing did as well, and that was pretty novel and cool that the Commissioners did that. But it also means there’s all these pragmatic aspects, so you need, effectively, even if the commission isn’t going to be finding actual criminal or civil liability, it’s still going to be making findings that have very strong inferences that could be made about what the RCMP was doing or what the Department of Justice was doing. That’s one facet, so you have lawyers who were then

advising departments, legally, on the elements that arise in relation to that department because the inquiry exists.

You also have a practical element. Again, it's not... because there wasn't that attribution of liability element, it wasn't as technical. But because you have such government buy-in and because you know the very broad mandate of the commission and you know the government has done a lot of things very wrong on this in the past - and also the government has programs in place now that actually are very good - the idea was also that you need to ensure that the documents and the evidence (it's not evidence in the same way it would be in court but it's still...), you have as the government, the primary party involved in abusive elements Indigenous-government relations then need to make sure that steps are taken to preserve evidence, because it wasn't clear, even by the time I left government, it still wasn't clear what the Commission was going to want of us, in terms of documentary evidence or testimonial evidence and that kind of thing. There was also going to be people testifying from government, like from RCMP and all that, so you have a team of people who are dealing with the legal questions - of what's the government doing in relation to the Inquiry - but you also have people advising on the policy elements.

So, this was just the Department of Justice, and even then, because Justice is kind of the "lawyers for the government", so then you're in legal kind of client relationship with the people in the other departments. But then you also had full teams of people in Indigenous Affairs working on this, and full teams of people at Health Canada working on this.

Q: What year were you involved?

[Redacted]

Q: To ask the last piece before we move on to the genocide question, can you tell us a little bit about why you left?

A: Yes, I can. How much have you been looking into the issues with the commission itself?

[Our answer: Quite a bit. We have gotten to this point where we both see all of the greatness that came out of it, but also all of the big, big problems that happened during it.]

Good, because that's what it is. It's a thing, like most things in life, where it's flawed. There's elements of it that are super important, and elements of it that are so flawed. And - my goodness. Every single day when I woke up, the first thing I would do would be to check Twitter and to check core activists on these issues to see what the Commission had done overnight or that day because nothing came out officially from the Commission. You had everything leaked to papers because of staff dissatisfaction, you had Commissioners quitting. It was - oh my goodness - embroiled in controversy. And it was such a lack of communication in core ways between the Commission and other bodies that were supporting it. You had no idea what you were going to find when you went on Twitter. It was exhausting. It was "Oh my goodness, OK, great, there's another exposé internally that they're not taking a trauma-informed approach," or you'd hear them going into communities in the North or something and they didn't actually consult with local elders about the appropriateness or timing of their trip or something.

And so you see all these things that, on the one hand, Commissioners - and again they did a fantastic job in a lot of ways - but sometimes it felt like this huge disconnect between what they were saying they were doing and then what it seemed they were maybe doing, or the approach they were saying they were

taking and then what kind of evidence was showing the approach was actually. So that was kind of one element, where in my eyes the Commission lost a lot of... the findings of the Commission lost a lot of authority in my eyes because of all the internal problems that I saw going on because of key organizations that had advocated for this for 30 years pulling support from it, because of the grandmother circle stepping back at some point and saying "this isn't trauma-informed, we won't give our stamp to it." There were so many issues that came up, that was big for me.

[Redacted]

Q: You mentioned that the conclusions lost some authority for you, so let's jump into discussing the genocide conclusion. We would like to hear some of your general thoughts about that, especially in regard to the distinction between "genocide" and "cultural genocide".

The other piece that I'll ask right away is: was the government expecting to have this conclusion come out of the Inquiry?

A: [Answer to the second part of the question:] I have no idea. No one ever mentioned anything. I don't think that any conversation I was ever - in the months that I was doing this work - was ever about being worried about the type of results or the type of findings that would happen, except for the hope that the Commission would be in a position, or would be wanting, to look at evidence of the types of programs that had been implemented that were working incredibly well. Not for the show of it, but because, again, that's how you get resources. If you can have a finding like that, then you would know... Yeah, anyway. So no, I never heard at any talk about thinking that there would be a certain outcome or trying to steer it so that there wasn't, or anything. I mean everything was just a big...

It was chaotic: the Commission was changing, Commissioners were leaving, and you got calls from people who had been advocates for ages, but also working with the government to try and bring about this process, who were then saying this is... you can't be running this anymore, these calls to take Chief Commissioner Buller off, everything. It was just a constant state... the state of existence of the entire Inquiry was a state of emergency, the entire time.

The other question on genocide. So interesting, whenever that came out. I was [redacted] doing my LLM when that report came out and so...I read it right after we did our genocide section in criminal law. It's interesting because there's so many ways you can think about it.

So, one of those ways is, obviously, legal categories are things that exist so that you can find whether something fits in them or not. So, on the one hand, you can say either it is legal genocide or it's not. Another way you can look at it is, law is a tool as well, so the legal finding of genocide, what does that do for the cause is another question. How did that...Not that you shouldn't do things if it's going to rub people the wrong way, obviously. But, strategically thinking, is putting the word genocide something that's ultimately going to help or harm this cause. I can see why they did it. The very fact that people [abroad] were talking about the report of this, that was a big strategic decision because no one outside of Canada would have been reading that, probably, otherwise - or at least in the international law community. So that was really interesting.

I think the authors of that are awesome, they are well-renowned, really, really wonderful scholars and practitioners, sometimes, in this exact field. So the legal analysis is, I think, spot on. I think that there are contentious matters, obviously, within the issue of genocide and the legal definition of genocide. I think

in the last five pages of genocide argument [found in the Supplemental Report on genocide], it went from being this really, really spot on discussion of the state of the law, to kind of being something that oscillated between what the law is and what they want the law to be - which is fine, that's what lawyers do as well, but I don't think that was always clear. So I think, maybe, the question of cultural genocide and social unit genocide is obviously legally contentious and is probably isn't really supported in the state of the law, so then to rely on those as the primary ways..., also just the aspect of, on a more technical note, using this legal category which they then apply largely to acts that started, at least, in the past and carried forward in a very different form as they moved forward. So, then you also have the question of retroactive application of a legal category that Canada had signed onto in the 1940s, so that's also a question.

But overall, I think it's good that they did that. I don't think it's a problem to push boundaries in that way and start a conversation. What I do think it did is... you have... Again, where I'm from, for example, even though we have a pretty strong Indigenous community there and the Indian band is amazing, they've done all these awesome cogenerate things and then, from that, been able to pull in... They've done a fantastic job with what they've been given or the circumstances they've been given. Nonetheless, the community I'm from is still so racist, shockingly, but people don't admit that because everyone is like "Canada's inclusive", shockingly racist. I think one element of this genocide finding is the question of who do we want to convince that this is an issue.

People who may be coming from a background that's more... less educated, potentially, or just has never been asked to confront these issues in a way that's something other than "Indians don't pay tax" - which is also just wrong. People like that, this is how you bring them on board. Maybe they're never going to be on board, so maybe that's not an issue, but when you're thinking of strategic advocacy and how you bring more people on board to believe that this is an issue. You probably lost some people with the genocide finding, but maybe it's people you wouldn't have convinced anyway.

Q: Let's move back a bit to the Inquiry. Because the report is mainly focused on MMIWG as the general mandate of the report and then at the end adds this genocide question, even though it accounts for a lot of history, the genocide piece is not necessarily weaved in all throughout. What do you think of the validity of trying to demonstrate a genocide on the basis of gender-based violence or femicide?

A: So, I guess that comes to the question of who can perpetrate genocide and who's committing the gender-based violence; then is it a liability of omission, and then I get all technical in my brain about that.

Do you mean in terms of gender-based violence as an act of genocide? Like, let's say you have killing members of the group or forcible removing of children, you mean? Or do you mean as a social unit or as the group that's having genocide committed against?

[Clarification on our part: Something that we've been discussing is the idea of genocide versus femicide, and what that means in the context of this inquiry when it's focused on MMIWG but it then extrapolates to genocide from that.]

That's interesting. Like: Is genocide the right tool or framework to use when talking about these issues. That's super interesting. I don't think it is the right framework to use in some ways, because ultimately, in my view at least, if you look at from all the way from contact to now, especially the earlier three

quarters of that, the parts that, to me, best fit the label of genocide, legally, are very much applicable to the whole national or racial-ethnic, depending on where you want to go, unit, as opposed to broken down onto the gender-based level.

And then you get to questions, again, about if genocide is a label that is predominantly supposed to be used for biological or physical destruction, then things like forced sterilization and stuff like that do fit into that model. But ultimately, that seems like a piece of what makes it a genocide, is perhaps the gender-based aspect of it; whereas, like you said, you've got other frameworks that apply on quite smoothly. But I know, from the government perspective, a lot of states are really hesitant to use the word 'femicide' interestingly. That's a cool thing to think about.

Q: Moving from that: the nature of the Inquiry was principally qualitative, rather than a 'harder' statistical and analytical approach (linked to the difficulties associated with collecting data on this issue). Do you see that as an issue when trying to demonstrate a pattern?

A: You mean in terms of finding genocide? If I think of the way international criminal judgements deal with genocide, it isn't really a numbers game, generally. It's more about a general intent. Patterns are discernable not just based on numbers. You can identify patterns of behavior without necessarily knowing the exact number of people that these patterns of behavior affect.

It's interesting, the statistics things, I had to work on it a bit when I was in the pre-inquiry job in government. Stats Canada does these focused editions on different issues, but then the question becomes when you have the sense of where the stats are coming from. One of the issues that happens is, for example, whenever there's a homicide and the RCMP are responding, the responding officer has to fill out a homicide survey - I think it's called - where they are literally checking boxes about things and that's where a lot of the stats are derived from for homicide, which would then also include all intimate partners homicides falling in there and homicide pieces against Indigenous women and girls are falling in there. So, one of the really interesting things was when we were looking at suggesting reforms to that to better capture gender-based violence and violence against Indigenous women and girls.

So, it's a huge challenging topic, how do you even get the right stats to support it. But then, again, with something like a finding of genocide, I think maybe the numbers aren't as important, but pragmatically, when you know something is an issue, you still, from a government perspective, do sort of need numbers because you need numbers to justify budget allocation, to know how much money you should put in. So it's important to have numbers for reasons other than the labeling of it.

Q: Jumping to our concluding questions, in relation to the genocide finding, what was your reaction to the Canadian response to the Inquiry - welcoming its conclusions, while being hesitant to say the word genocide?

That's where politics comes into it. We have the Apology Act [2009] in Canada because it's a problem that people would apologize and then liability could be attributed to them for apologizing. So we do have an Apology Act that says saying "sorry" is not an admission of guilt. Nonetheless, when you're looking at something like genocide, that becomes a question of State responsibility and so, I could see why the government would be a little cautious, without informed legal opinion, of instantly adopting that kind of idea.

And frankly, also because - maybe it's something that was considered - but in my view, it relates a bit to the questions you were asking before. It wasn't the purpose of this inquiry to make a legal determination of genocide. That's a path that the Commissioners chose to take at some point, but ultimately, largely based on evidence of qualitative, one-on-one type interviews where you're not necessarily talking about the same thing across the board, where you don't even have verification frankly; and it's not about questioning survivors or something, it's pragmatically, some of it is memory issues. So one of the things that would be happening was, while new families were coming forward, different government agencies that had dealt with those families in previous incidents - RCMP who had been dealing with that murder case or something like that - would have the file. One very interesting thing is that sometimes, the issues are a matter of cultural communication, in some ways.

So again if it's a family in the North or something like that, 40 years ago, and the person didn't speak English and then you have these white English officers who were doing horrible things - let's not... the police [messed] this up wildly for many, many years and are still doing it in a lot of places. But ultimately, it was really interesting because there was a position created that worked so well, it was called a Community Liaison Information Officer, and the idea was that, actually, a lot of the questions that these families had are answerable, it's just that the police [messed] up and didn't tell them that there were answers, or something like that. So these positions were created and they were actually available at the community hearings, although with a lot of hesitation from the Commissioners, even though they were all Indigenous workers and it was actually an Indigenous-led program. So then what happened is that, the family member who was then testifying could actually have a meeting with someone who had the file for their family, that they'd never seen, and talk to them about what steps were taken and why it was closed or that kind of thing. And it was so good, it was such a good process.

But ultimately, the point is to say that, the stories that are given by the families are the stories as they understood them, and that's the story that they experienced so it's the right story. But often, the story that they had isn't actually the full story because of problems with how government communicated - government's fault for sure - but so just because a family says it happened also doesn't mean that it happened in that way and maybe there was a full investigation, a lot of these files actually did have super full investigations and people arrested and the family just didn't know. Which is again all on the police side, that's hugely problematic.

So, a huge part of this is also the communication element but that's to say that, because it wasn't supposed to necessarily be oriented around a legal finding of genocide, the evidence that you're basing that conclusion on as well isn't necessarily... Is it evidence? I don't know. Was the point of this really evidence? Or was the point of this more allowing space and platform that should have been given many years ago in a process that would hopefully allow also, not just for some element of healing and moving forward, but also for an element of tangible, practical solutions that can be implemented by the people who have been [messing] this up for the last three hundred years.

Q: As a final question, about a year later now, what impact do you think the Inquiry had and do you think that, with Trudeau re-elected, there is a future for the question of MMIWG - or does it stop at the Inquiry as an ultimate show of good faith from the government?

A: Again, reason that the second little part of the Terms of Reference is phrased the way it is, is to get very concrete, actionable recommendations. That was the whole point. When I looked at the recommendations, I did not read...

Oh, that's another issue, I did not read the whole report because it is so inaccessible - for me, I've got too many degrees and I love reading, and it's still inaccessible. To me that's just... I was enraged when I saw that. I guess you've got reporting, but there could have been a different approach that would have made the results a little more relevant to the people who gave evidence and stuff like that, but that's a separate issue.

[Going back to the question.] Because one of the purposes was those actionable things, I think that shows, genuinely, and this is again as a pretty critical person and very anti-most of what the government does, I do think there was a very genuine attention toward those actionable items to implement action. I would also note - I don't know what's happening in the government anymore, I haven't been involved in this for a while, and even then I wouldn't know on the Prime Minister level or something, why decisions were made, I was very much in the Department of Justice - I think one thing to note is that, when there are governments that are genuinely supportive of trying to change these kinds of things, there is almost nothing you will see on the surface. What you see on the surface is almost nothing compared to what's happening behind the scenes. And I know it's on the government to communicate that type of things and often that's not done well - to some extent Trudeau was trying to do that with his open mandate letters from his Ministers and that type of things. But ultimately, just because you're not seeing all of it, doesn't mean it isn't happening behind the scenes. I don't know if it is or not, because like I said I'm not involved.

I don't know what the future of this is. I know that communities will continue to advocate like they have forever in Canada, because that's the only way that things change. I really hope it was all for something, but like I said I actually lost a lot of faith in what the Commission did, and therefore in the results the Commission reported.

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