



Request for Thematic Hearing
during the
144th Period of Sessions
March 19-30, 2012

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Dr. Santiago Canton
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Re: Request for Thematic Hearing—Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada

Dear Dr. Canton,

The Native Women's Association of Canada (NWAC) and the Canadian Feminist Alliance for International Action (FAFIA), with the support of the University of Miami Human Rights Clinic (HRC), respectfully request a thematic hearing under Article 66 of the Rules of Procedure of the Inter-American Commission on Human Rights regarding the alarming numbers of disappearances and murders of Aboriginal women and girls in Canada. This request is for the Commission's 144th period of sessions, taking place from March 19 to March 30, 2012.

The Native Women's Association of Canada, through its Sisters in Spirit project, has documented over 600 disappearances and murders of Aboriginal women and girls in Canada over the past 30 years.¹ Between 2000 and 2008 alone, 153 murders of

¹ Native Women's Association of Canada, *What Their Stories Tell Us: Research findings from the Sisters In Spirit initiative*, at 19, available at http://www.nwac.ca/sites/default/files/reports/2010_NWAC_SIS_Report_EN.pdf. Since this report was

Aboriginal women were documented.² NWAC, FAFIA and other human rights organizations believe that there are many more Aboriginal women and girls whose disappearances and murders remain undocumented. Overall in Canada, Aboriginal women are seven times more likely to be murdered than non-Aboriginal women.³ In fact, Aboriginal women account for 10% of the total number of female homicides in Canada, but only make up 3% of the nation's female population.⁴

Despite these overwhelming statistics concerning disappearances and murders of Aboriginal women and girls, the Canadian State has failed in its obligation to exercise due diligence to adequately prevent this violence, investigate reports of disappearances and murders, and bring perpetrators to justice. Authorities, and in particular the federal government, have failed to implement a comprehensive, national plan to stop this violence, including measures such as training, protocols, systems for disaggregated data collection, co-ordination across jurisdictions, and accountability mechanisms. For example, police are not required to or even provided training or support to ensure consistent and accurate record-keeping concerning the Aboriginal identity of crime victims and missing persons.⁵

These police failures are integrally linked to the fact that Aboriginal women are amongst the most discriminated against and socially and economically disadvantaged groups in Canadian society. This social and economic marginalization not only makes these women easy prey for violent perpetrators, but is also used by officials as a justification for failing to protect them. Discriminatory attitudes by police, such as the belief that Aboriginal women are “transient,” live a “risky lifestyle,” or “will show up when they want to,” are often used to justify failure to respond to reports of missing women.⁶ The vulnerability of Aboriginal women to sexualized and racialized violence is created in part by the lack of response to it from the police and the courts.⁷

The safety and protection of Aboriginal girl-children is also a serious issue. Justice for Girls, a Canadian NGO, reported to the UN CEDAW Committee at the time of Canada's last review that “Indigenous girls in Canada face extreme levels of violence as well as

published in 2010, more disappearances and murders of Aboriginal women and girls have been documented by the Native Women's Association of Canada, and the number is now over 600.

² *Id.* at ii.

³ Statistics Canada, Vivian O'Donnell and Susan Wallace, *First Nations, Metis and Inuit Women*, July 2011, at 43, available at <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>.

⁴ *Supra* note 1 at ii.

⁵ Amnesty International, “No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada,” at 22, available at <http://www.amnesty.ca/amnestynews/upload/AMR200122009.pdf>.

⁶ Native Women's Association of Canada, *Voices of Our Sisters In Spirit: A Report to Families and Communities*, 2nd Edition, March 2009 at 96, available at http://www.nwac.ca/sites/default/files/download/admin/NWAC_VoicesofOurSistersInSpiritII_March2009_FINAL.pdf.

⁷ Kelly A. MacDonald, Justice for Girls, “Justice System's Response: Violence against Aboriginal Girls,” submitted to the Honourable Wally Oppal, Attorney General of British Columbia (September 2005) at 12, available at <http://justiceforgirls.org/publications/pdfs/Violence%20against%20Aboriginal%20Girls%20-%20Final%20Brief%20-%20Sept%202005.pdf?/20040213/newsPink.html>.

deeply rooted and pervasive social inequality....”⁸ Justice for Girls reports further that “[w]idespread human rights abuses against Indigenous girls are committed in the context of the criminal justice system, both in terms of over-criminalization and policing of girls, and physical and sexual abuses by police and other criminal justice authorities. These state perpetrated abuses and state failures to prevent, investigate and punish acts of violence against Indigenous girls, along with a lack of independent oversight and accountability of policing...are a very serious human rights concern...”⁹

The widespread patterns of violence against Aboriginal women and girls occur in the context of colonization and its impacts, including the loss of traditional lands, cultures and languages, long-standing and continuing discrimination against Aboriginal women (which is entrenched in the *Indian Act*), and an intergenerational cycle of violence resulting from abuse and mistreatment of Aboriginal children who were forced into residential schools in Canada. Aboriginal women also face severe economic and social hardship, including high rates of poverty and unemployment, lower educational attainment, poor health, lack of access to clean water, and overcrowded, substandard housing.¹⁰ James Anaya, United Nations Special Rapporteur on indigenous peoples, has expressed deep concern over the “dire economic and social condition” under which Aboriginal communities in Canada live.¹¹

Aboriginal women in Canada face discrimination on multiple fronts: as women within their home communities due to the patriarchal effects of colonialism, as women in mainstream society, and as Aboriginal persons in mainstream society.¹² As described above, they live disproportionately in poverty, face high risks of violence, and experience high rates of child apprehension and systemic discrimination within the criminal justice and social welfare systems.¹³ Additionally, a disproportionate number of the most vulnerable street prostituted women are Aboriginal women, who struggle with addiction, homelessness, and chronic, often life-threatening, health problems.¹⁴ Engagement in prostitution is a reflection of the overall economic and social marginalization faced by these women, and it further increases levels of vulnerability to coercion, abuse and

⁸ Justice for Girls, “Submission to UN Committee on the Elimination of All forms of Discrimination Against Women at its 7th periodic Review of Canada,” Vancouver, BC (2008), at 7, available at http://www.justiceforgirls.org/publications/pdfs/CEDAW_Submission-FINAL.pdf.

⁹ Justice for Girls, Submission prepared for the UN Special Rapporteur on Violence Against Women, October 2011.

¹⁰ Conditions of life on reserves in Canada are shockingly poor. The Attawapiskat First Nation in Ontario declared a state of emergency in November 2011 and called in the Red Cross because many residents in the community are living in makeshift tents and shacks without heat, electricity and indoor plumbing. See Linda Nguyen, “Lives At Risk on Ontario’s Attawapiskat reserve,” November 18, 2011, available at <http://www.canada.com/news/Lives+risk+Attawapiskat+reserve+officials/5733523/story.html#ixzz1jMI3Wu00>.

¹¹ James Anaya, “Canada / Attawapiskat First Nation: statement by the UN Special Rapporteur on indigenous peoples,” December 20, 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11743&LangID=E>.

¹² The B.C. CEDAW Group, “Inaction and Non-compliance: British Columbia’s Approach to Women’s Inequality,” (September 2008) at 10, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CEDAWCanadaBC2008.pdf>.

¹³ *Id.*

¹⁴ *Id.* at 29.

violence. The discrimination and indifference by authorities towards Aboriginal women results in impunity for many of the crimes committed against them, and permits the violence to continue.

The Native Women's Association of Canada, the Canadian Feminist Alliance for International Action, and the University of Miami School of Law Human Rights Clinic believe that the above-mentioned factors amount to serious violations of the human rights of Aboriginal women and girls under the American Declaration on the Rights and Duties of Man ("Declaration"), including: the right to life, which includes "having access to the conditions that guarantee a dignified existence,"¹⁵ (Art. I); the right to equality/non-discrimination (Article II); the right to protection of honor, personal reputation, and private and family life (Article V); the rights of the child (Article VII); the right to preservation of health and well-being (Article XI); and the right to access the courts and to justice (Article XVIII). Although Canada has not yet ratified the principal Inter-American treaties, these failures would likely also amount to violations of the corresponding articles within the American Convention on Human Rights and contravene the goals of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belem do Para").

To date, the Inter-American Commission on Human Rights has not examined the issue of violence against Aboriginal women and girls in Canada, a situation that closely parallels that of the systematic disappearances and murders in Juarez, Mexico. A thematic hearing would be an effective means through which to turn regional and international attention toward this critical human rights issue in Canada and throughout the hemisphere. Additionally, an audience with the IACHR would encourage the Government of Canada to engage with Aboriginal women and representative organizations to develop and implement a comprehensive, coordinated plan of action in keeping with the scale and seriousness of the violence and discrimination experienced by these women.

A Due Diligence Failure: Details on Disappearances and Murders of Aboriginal Women and Girls

Despite the staggering statistics described above, authorities in Canada have failed to properly prevent, investigate, and punish perpetrators in these cases of murders and disappearances, despite having an enhanced duty under international human rights law to investigate violence against women in circumstances such as these. In the recent *Cotton Field* case, the Inter-American Court of Human Rights found that an "obligation of strict due diligence arises in regard to reports of missing women, with respect to search operations during the first hours and days" and that the obligation to investigate "effectively has a wider scope in dealing with the case of a woman who is killed or, ill-treated or, whose personal liberty is affected within the framework of a general context of violence against women."¹⁶

¹⁵ *Street Children case (Villagrán Morales et al.)*, 1999 Inter-Am. C.H.R. (ser. C) No. 63, at ¶ 144 (Nov. 19, 1999).

¹⁶ See, e.g., *Gonzalez et al. v. Mexico (Cotton Field)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009) ¶¶ 283, 293.

An example of this failure to exercise due diligence in the Canadian context concerns the investigations related to the murders of women, many of whom were Aboriginal, by serial killer Robert William Pickton. Pickton was charged in 2002 and 2003 with first-degree murder in the deaths of 26 women in the Downtown Eastside of Vancouver, British Columbia. In 2007, he was convicted of second-degree murder on six counts, while proceedings on the other counts were stayed. Notably, he once stated to a cellmate who was an undercover police officer that he had killed 49 women in total. The investigation into Pickton was plagued by a lack of resources, training, and leadership, poor continuity of staffing, and multi-jurisdictional challenges.¹⁷ For example, police failed to pursue compelling information in 1998 and 1999 suggesting Pickton was the likely killer.¹⁸ Additionally, in two instances—in 1992 and 1997—Pickton was arrested for assault and attempted murder, but prosecutors did not proceed with these cases, a questionable action that is now being investigated in an official government inquiry (see below).¹⁹ Many believe that a full prosecution may have prevented many subsequent murders for which Pickton is a primary suspect.²⁰

While the Government of British Columbia has mandated a Missing Women's Commission of Inquiry to investigate failures by police and prosecutors with regard to the murders by Pickton, the scope of the Inquiry is limited to events surrounding Pickton. This Inquiry does not specifically focus on missing and murdered Aboriginal women or on understanding the conditions and circumstances that place Aboriginal women at heightened risk.²¹ Because Aboriginal women were disproportionately represented among the victims of Pickton, families and non-governmental organizations had originally hoped that the Inquiry might address their circumstances and realities.

Unfortunately, the Commission of Inquiry has exacerbated the discrimination against Aboriginal women, rather than correcting it. The Government of British Columbia denied funding for legal counsel to groups who were granted standing at the Inquiry, including the Native Women's Association of Canada. Such a denial of funding to groups after they have been granted standing by a Commissioner of Inquiry is unprecedented in Canada.²² This denial has had the effect of shutting out and denying participation to all Aboriginal organizations who were granted standing and to other key advocacy groups, in particular

¹⁷ Doug LePard, Deputy Chief Constable, Vancouver Police Department, "Missing Women Investigation Review," (August 2010) at 18, available at http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Wally Oppal, "Statement by Missing Women Commissioner of Inquiry Commissioner," August 29, 2011, available at <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/08/2011-08-29-Statement-of-the-MWI-Commissioner.pdf>.

²¹ National Chief Shawn A-in-chut Atleo and Grand Chief Doug Kelly, chair of the First Nations Health Council, "Real inquiry needed into Pickton killings: Oppal commission should focus on police errors during investigation," Victoria Times Colonist, October 28, 2010, available at http://www.missingpeople.net/real_inquiry_needed_into_pickton.htm.

²² Amnesty International, "Experts Call Decision Not To Fund Counsel for Missing Women Inquiry Shocking and Unprecedented," September 7, 2011, available at <http://www.amnesty.ca/media2010.php?DocID=905>.

those that are most knowledgeable about the pre-existing conditions of the missing and murdered women, and about the systemic, sexualized and racialized violence against Aboriginal women and girls in Canada.

Moreover, the British Columbia Missing Women Commission of Inquiry, and the Canadian government's overall response to the more general problem of disappearances and murders of Aboriginal women, are plagued by serious temporal, geographical, and financial limitations. The Commission of Inquiry focuses on police investigations during one small period of time—1997 to 2002—and principally in one location in one province—British Columbia—when in fact the problem exists nation-wide.²³ In 2010, the federal government allocated \$10 million over two years—an extremely small amount within the federal budget—to address violence against Aboriginal women and girls *throughout the country*. Most of this money is being directed to police initiatives to track missing persons, but not on initiatives that will address the widespread patterns in Canadian society of violence against Aboriginal women. These latter initiatives are critical to preventing such atrocities from continuing.²⁴ Additionally, funding for the work of advocacy groups such as the Native Women's Association of Canada's Sisters in Spirit Project, which the government itself has recognized as vital to drawing attention to the issue, has been discontinued.²⁵ This poor governmental response to such a massive problem cannot do justice to all those who have died or who still live in the shadows of this violence, and it certainly is not designed to prevent the cycle of violence from continuing.

Criticism by International Organizations and the United Nations

International organizations, including the United Nations, have repeatedly recognized the seriousness of the situation concerning missing and murdered Aboriginal women and girls in British Columbia. Amnesty International has drawn attention to the situation through its Stolen Sisters campaign. It has collected the stories of missing and murdered women and their families, created petitions for individuals to sign, and urged the Government of Canada to take immediate steps to address the problem.²⁶

Since 2005, several United Nations treaty bodies (including the Human Rights Committee, CERD Committee, CEDAW Committee, and CESCR) have highlighted two facets of this problem:

²³ The Government of British Columbia, when pressed by non-governmental organizations, expanded the scope of the Inquiry to permit it to “study” the disappearances and murders of another 31 women, most of whom are Aboriginal, who have gone missing or been murdered in the vicinity of Highway 16, a section of remote highway in northern British Columbia, now known as the “Highway of Tears.” However, the Inquiry is not mandated to make any findings of fact regarding police responses. Consequently, no responsibility can be assigned for any police or official failures related to the “Highway of Tears.”

²⁴ Amnesty International, “Stolen Sisters: Discrimination and violence against Indigenous women in Canada” accessed August 23, 2011, available at http://www.amnesty.ca/campaigns/sisters_overview.php.

²⁵ *Id.*

²⁶ *Id.*

- the failure of police to protect Aboriginal women and girls from violence and to investigate disappearances and murders promptly and thoroughly;²⁷ and
- the disadvantaged social and economic conditions which make Aboriginal women and girls vulnerable to violence and unable to escape from it.²⁸

In addition, during the Human Rights Council’s Universal Periodic Review of Canada in 2009, recommendations were made to Canada regarding violence against women, and against Aboriginal women in particular.²⁹ These included recommendations that Canada remedy police failures to deal with violent crimes against Aboriginal women and girls, and that Canada address the low socio-economic status of Aboriginal women and girls as a factor that contributes to the violence against them.

The severity of the situation is also highlighted by the CEDAW Committee’s recent announcement that it has initiated an Article 8 Inquiry under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on missing and murdered Aboriginal women in Canada, in light of its own review of Canada and formal requests filed by the Native Women’s Association of Canada and the Canadian Feminist Alliance for International Action.³⁰ Under Article 8 of the Optional Protocol, the Committee has discretion to conduct an Inquiry into situations of “grave or systematic violations” occurring within a state party.³¹ This Inquiry procedure has only,

²⁷ Human Rights Committee, Concluding observations: Canada, UN Doc. CCPR/C /CAN/CO/5 (20 April 2006) at ¶ 23, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.C.CAN.CO.5.En?Opendocument>; Committee on the Elimination of Racial Discrimination, Concluding observations: Canada, UN Doc. CERD/C/CAN/CO/18 (25 May 2007) at ¶ 20, available at <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>; Committee on the Elimination of Discrimination against Women, Concluding observations: Canada, UN Doc. CEDAW/ /C/CAN/CO/7, (7 November 2008) at ¶ 30-32, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CAN-CO-7.pdf>.

²⁸ Committee on Economic, Social, and Cultural Rights, Concluding observations: Canada, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006) at ¶ 11(d), 15, 26, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.CAN.CO.4,%20E.C.12.CAN.CO.5.En?Opendocument>; Human Rights Committee, Concluding observations: Canada, UN Doc. CCPR/C /CAN/CO/5 (20 April 2006) at ¶ 23-24, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.C.CAN.CO.5.En?Opendocument>; Committee on the Elimination of Racial Discrimination, Concluding observations: Canada, UN Doc. CERD/C/CAN/CO/18 (25 May 2007) at ¶ 21, available at <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>; Committee on the Elimination of Discrimination against Women, Concluding observations: Canada, UN Doc. CEDAW/ /C/CAN/CO/7, (7 November 2008) at ¶ 43-46, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CAN-CO-7.pdf>.

²⁹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/11/17, 5 October 2009 at ¶ 33 – 38, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/152/99/PDF/G0915299.pdf?OpenElement>.

³⁰ Indian Country Media Network, “Aboriginal Leaders Welcome U.N. Attention to Missing-Women Cases,” December 15, 2011, available at <http://indiancountrytodaymedianetwork.com/2011/12/15/aboriginal-leaders-welcome-u-n-scrutiny-of-missing-women-cases-67937>

³¹ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, A/RES/54/4, 15 October 1999.

to date and to the public's knowledge, been utilized once before in the similar situation of systematic disappearances and murders of women in Juarez, Mexico.³²

The requirement of "grave or systematic violations" and the rarity with which the CEDAW inquiry procedure is invoked underscore the seriousness of the situation in Canada. A thematic hearing before the Inter-American Commission would be an important complement to the CEDAW Committee's Inquiry. Engagement within the Inter-American system, which has produced progressive jurisprudence and guidance on patterns of violence against women, particularly through its site visit and report related to Juarez, Mexico, is critical in order to bring these violations to light and to hold the Canadian State accountable for protecting this vulnerable segment of its population and providing remedies for this systematic pattern of sexualized and racialized violence.

Conclusion

The shocking numbers of disappearances and murders of Aboriginal women, who are amongst the most vulnerable and marginalized in Canadian society, warrant immediate and comprehensive action by the State. However, the Canadian government has responded ineffectively and its efforts to prevent, investigate, and remedy this violence have been weak and piecemeal, perpetuating and exacerbating the violence and marginalization faced by these women.

For the foregoing reasons, the Native Women's Association of Canada and the Canadian Feminist Alliance for International Action, with the support of the University of Miami Human Rights Clinic, respectfully request a thematic hearing for the next period of sessions (March 2012) in accordance with Article 66 of the Rules of Procedure of the Inter-American Commission on Human Rights.

Thank you for your consideration of our request.

Sincerely,



Jeannette Corbiere Lavell
President
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³² United Nations, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005 (case file of attachments to the application, volume VII, attachment 3b, folio 1921).



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