



September 12, 2011

Madame Sylvia Pimentel, Chair

Members

United Nations Committee on the Elimination of Discrimination Against Women

c/o CEDAW Secretariat

OHCHR - Palais Wilson, 8-14 Avenue de la Paix, CH-1211

Geneva 10, Switzerland

Dear Madame Pimentel and Members of the Committee,

The Canadian Feminist Alliance for International Action (FAFIA) wrote to you on January 17, 2011 to request that the Committee on the Elimination of Discrimination Against Women initiate an inquiry regarding missing and murdered Aboriginal women and girls in Canada, under Article 8 of the Optional Protocol to CEDAW. As you know, the Native Women's Association of Canada (NWAC) has documented over 600 disappearances and murders of Aboriginal women and girls, the majority of which have occurred over the last twenty years. Many groups, including NWAC, believe the numbers may be higher.

We understand that the request for an inquiry by the CEDAW Committee has been registered, and that Canada has been notified. We write again now to urge the Committee to initiate an inquiry and to visit Canada in order to hear directly from Aboriginal women and girls, their families, police and justice officials, Members of Parliament and Members of Legislative Assemblies in the provinces and territories.

In our January letter, we wrote: "Despite years of lobbying by many diverse non-governmental organizations, the Government of Canada, along with the provincial and territorial governments, have still not put in place a comprehensive and effective action plan for addressing the root causes and effects of the violence against Aboriginal women and girls. Nor is there a comprehensive plan for improving and co-ordinating the capacity of the police, and the justice system, to protect Aboriginal women and girls, or to respond adequately to the violence when it occurs. The Government of Canada has not publicly acknowledged that there are grave and systematic violations of the human rights of Aboriginal women and girls occurring in Canada, nor has it acknowledged its obligations to take concrete steps to prevent the violence and to ensure that the rights of Aboriginal women and girls to life, to freedom from torture, to equal protection and benefit of the law, and to equality in social and economic conditions are fully realized."

This situation remains unchanged. There is still no comprehensive plan in place to ensure that all governments meet their obligations to exercise due diligence to "prevent, investigate and...punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."¹ Canada has no national action plan on violence against women, and, in particular - despite the evident need - no national action plan to address violence against Aboriginal women and girls.

We are aware that governments in Canada have taken some steps - allocation of monies as described in FAFIA's January letter, police task forces to deal with 'cold cases' in some locations, and discussions

¹ United Nations General Assembly, Declaration on the Elimination of Violence against Women, A/RES/48/104, 23 February 1994, Article 4(c).

among federal, provincial and territorial Ministers and officials. However, to date, these steps are inadequate and disconnected. They have not resulted in a coordinated structure and a broader policy commitment to ongoing measures.

We wish to draw your attention to the following new information.

1. Government of Canada, House of Commons, Standing Committee on the Status of Women - Interim Report on Violence against Aboriginal Women – March 2011

The Standing Committee on the Status of Women is a Committee of the House of Commons of the Government of Canada. It is composed of Members of Parliament from all parties. The Committee can select issues for study. It can make recommendations and a report to the House of Commons. The Committee can request a response by the Government of Canada within 150 days of a report being made.

The Committee issued an Interim Report on Violence against Aboriginal Women in March 2011. However, because the Committee's report is an interim one, no recommendations have been made, and consequently, the Government of Canada has not been asked to respond.

The 40th Parliament was prorogued for an election in April, and a new session of Parliament began on June 2, 2011. The House of Commons Standing Committee on the Status of Women has now been reconstituted with new Members of Parliament. The newly composed Committee has not decided whether it will proceed with the study of violence against Aboriginal women.

The Interim Report, released in March 2011, recognized the need for a comprehensive approach to eliminating violence against Aboriginal women and girls.² Between April 2010 and February 2011, the Committee heard from over 150 witnesses from across Canada. The Committee stated:

The Committee understands that it is impossible to deal with violence against Aboriginal women without dealing with all of the other systems which make women vulnerable to violence and make it difficult for them to escape violence. What is required is a co-ordinated, holistic approach to violence against Aboriginal women. The vulnerability of Aboriginal women is not new; it is chronic.

The Standing Committee on the Status of Women endorsed the 2008 observations of the CEDAW Committee in these words:

During its last review of Canada, the UN Committee on the Elimination of Discrimination against Women (CEDAW) made specific recommendations to Canada, about violence against women and about missing and murdered Aboriginal women more particularly. The Committee recognizes that the testimony it received on violence against Aboriginal women reaffirms the findings of the CEDAW Committee that:

² Standing Committee on the Status of Women, Interim Report, *Call Into the Night: An Overview of Violence against Aboriginal Women*, March 2011, 40th Parliament, 3rd session, online at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3>

Aboriginal women in Canada continue to live in impoverished conditions, which include high rates of poverty, poor health, inadequate housing, lack of access to clean water, low school-completion rates and high rates of violence. They are underrepresented in all areas of the labour market, in particular in senior or decision-making positions, have higher rates of unemployment and face a greater pay gap in terms of their hourly earnings compared with men.

The Committee plans to situate the question of violence within this larger context. As it works toward its final report, the Committee will take into consideration the request of witnesses who called on the federal government to put in place a national action plan, recalling once again that the CEDAW Committee had proposed that Canada:

[D]evelop a specific and integrated plan for addressing the particular conditions affecting Aboriginal women, both on and off reserves,... including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, [and] low income...

The Committee found that the poverty of Aboriginal women was repeatedly cited by witnesses as a root cause of the violence. The Committee also noted that the lack of adequate affordable housing makes violence difficult to escape, and the ongoing criminalization of Aboriginal women and girls has led to their overrepresentation in Canadian prisons. Aboriginal women now make up one-third of the federal prison population; when they leave prison they are further marginalized by society, and offered little assistance.³

Aboriginal women who are poor, inadequately housed, have criminal records, are in prostitution, or have addictions are numerous among those who are missing or murdered. Yet, as the Native Women's Association of Canada has reported, and the Standing Committee also noted, police in different jurisdictions have regularly discounted reports of Aboriginal women's disappearances when they are made by family members or friends on the grounds that the Aboriginal women are "transient", live a "risky life style", or "will show up when they want to." The social and economic marginalization of the women not only makes them easy prey for violent men, but is used by officials as a justification for failing to protect them.⁴

While the report of the Standing Committee on the Status of Women is useful, it is an interim report, with no recommendations, and it requires no government response. The newly composed Standing Committee may, or may not, continue the study of violence against Aboriginal women and produce a final report. Even if it does, the Conservative federal government has, in the past, responded negatively to most of the recommendations from this Committee.

³ *Evidence*, Standing Committee on the Status of Women, Kim Pate, Executive Director, Canadian Association of Elizabeth Fry Societies, February 8, 2011. See also Canadian Association of Elizabeth Fry Societies and Native Women's Association of Canada, "Women and the Canadian Legal System: Examining Situations of Hyper-Responsibility" in *Canadian Woman Studies*, Indigenous Women in Canada: The Voices of First Nations, Inuit and Métis Women, Winter/Spring 2008, Volume 26, Numbers 3,4 at 94. See also, Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, December 2003, online at: <http://www.chrc-ccdp.ca/pdf/reports/fswen.pdf>

⁴ Native Women's Association of Canada, *What Their Stories Tell Us*, March 2010, online at: http://www.nwac.ca/sites/default/files/imce/2010_NWAC_SIS_Report_EN.pdf

2. Government of Canada, Auditor General's Report – June 2011

The Auditor General of Canada conducts performance audits of federal departments and agencies, annual audits of the government's financial statements, and special examinations. Annual reports of the Auditor General note good practices, areas requiring attention, and recommendations for improvement. The Auditor General's reports are tabled in the House of Commons and referred to the Public Accounts Committee. The Public Accounts Committee can make recommendations for action to the Government of Canada, which must respond within 150 days. Recommendations of the Auditor General are taken seriously by the public and by the Government of Canada. However, recommendations regarding the improvement of social and economic conditions of Aboriginal people living on reserves made over a ten year period have not been effectively implemented.

In her 2011 Status Report, Auditor General Sheila Fraser reported that there is no progress towards improving conditions on First Nations reserves in Canada. The report, released June 9, shows that despite 10 years of Auditor General's recommendations, "conditions have generally not improved for First Nations.... The education gap between First Nations living on reserves and the general Canadian population has widened, the shortage of adequate housing on reserves has increased, comparability of child and family services is not ensured, and the reporting requirements on First Nations remain burdensome." Ms. Fraser concluded that "change is needed...."⁵

While the House of Commons Standing Committee on the Status of Women, along with the CEDAW Committee and other UN bodies, understand that improved social and economic conditions are necessary to prevent violence against Aboriginal women and girls, Ms. Fraser, auditing actual conditions for Aboriginal women and men living on reserves, finds no improvement.

Ms. Fraser's report is not focused specifically on women and girls, nor does it address the socio-economic conditions of Aboriginal women and girls living off reserve. Nonetheless, it reveals that Canada, according to the most recent report of its own senior monitor, is not yet taking effective steps to provide Aboriginal women and men on reserves with equal access to education, safe and decent housing, clean water, and adequate child and family services, even though improvements in these fundamental conditions are essential to the safety and well-being of Aboriginal women and girls.

3. Government of British Columbia - Missing Women Commission of Inquiry

In our January 17, 2011 letter we informed you that on September 27, 2010, the Government of British Columbia established the Missing Women Commission of Inquiry, with the former Attorney General of British Columbia, Wally Oppal, Q.C., as the Commissioner. This is an inquiry into the facts, police investigations and official decisions involved in "the Pickton case".

Since the early 1990s, over 60 women have gone missing from Vancouver's Downtown Eastside. The Vancouver Police and RCMP did not get involved until 1999. Police and city officials long denied that there was any pattern to the disappearances or that women in the area were in any particular danger.

⁵ Sheila Fraser, Auditor General of Canada, Status Report, June 2011, online at: http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html - hd3b

In 2002 and 2003, Robert William Pickton was charged with first-degree murder in the deaths of 26 of the women missing from Vancouver's Downtown Eastside. In December 2007, Pickton was convicted of second-degree murder on six counts. Proceedings on the other counts were stayed.

The Missing Women Commission of Inquiry is not specifically focused on missing and murdered Aboriginal women in British Columbia, but because Aboriginal women were disproportionately represented among the victims of Robert William Pickton, it will address their circumstances and realities in part.

According to the current count, 31 women and girls have also gone missing or been murdered in the vicinity of Highway 16, which runs from Manitoba to the Pacific Ocean through Northern B.C. The B.C. section of this remote highway is now known as the 'Highway of Tears'. The majority of the women who have disappeared or been murdered along the Highway of Tears are Aboriginal.

Although the disappearances and murders of women along the Highway of Tears was not originally included within the mandate of the Missing Women Commission of Inquiry, recently the Government of British Columbia agreed to permit the Commissioner to study the disappearances and murders of women along the "Highway of Tears" as well the disappearances and murders of women from the Downtown Eastside. However, there will be no fact-finding with respect to the Highway of Tears disappearances and murders, only "study". Consequently, no responsibility can be assigned for any police or official failures.

After inviting groups and individuals to apply for standing, the Commissioner granted standing to participate in the Inquiry to 13 groups. Some were granted full standing and some were granted limited standing. Those with full standing are permitted to cross-examine all witnesses; those with limited standing can apply to the Commission for permission to cross-examine selected witnesses.

The Commissioner recommended to the Government of British Columbia that funding be provided to the groups based on their level of involvement in the inquiry; thus full participants would receive more funding than limited participants. The Native Women's Association of Canada was granted full standing, and a coalition of women's organizations, the Women's Equality and Security Coalition, which includes members of the Canadian Feminist Alliance for International Action, was granted limited standing.

However, on May 19, 2011, the Attorney General of British Columbia released an information bulletin indicating that it would provide funding for one lawyer to represent some of the families of women murdered by Robert William Pickton, but would not provide funding to any of the other groups granted standing by the Commissioner.

The Attorney General has, in effect, overturned the decision of an independent Commissioner regarding standing since many of the groups will be unable to participate in the Inquiry's fact-finding process unless public funding for legal counsel is provided by the government. The Vancouver Police Department, the Criminal Justice Branch of the Attorney General's Ministry, and the Royal Canadian Mounted Police - whose conduct is under scrutiny - will all be represented by publicly-funded legal counsel. But the groups which have the knowledge to test and examine the evidence of police and official witnesses, through cross-examination, will be unrepresented.

On June 27, the Commissioner invited the groups to whom standing had been granted to explain the impact of the government's decision not to provide funding. The Commissioner then wrote a letter dated

June 30, 2011 in response to the Attorney General, a copy of which is attached to this letter. Mr. Oppal states: "It would be the height of unfairness to require unrepresented individuals to cross-examine police who are represented by highly qualified counsel."

The Attorney General of British Columbia reiterated his refusal to provide funding to any of the groups granted standing by Commissioner Oppal's (except for the one lawyer who represents some of the families of Pickton's victims) on July 22, 2011.

The decision of the Government of British Columbia to deny funding to women's groups, including Aboriginal women's groups, as well as to Aboriginal organizations - both national and provincial - and to organizations that provide services in the Downtown Eastside of Vancouver, is shocking. The Government's preference is to view the disappearances and murders of women in British Columbia as isolated incidents which affected a handful of families.

This is the first and only official inquiry appointed in Canada to examine the disappearances and murders of Aboriginal women, and the police responses to them. However, because of the denial of funding for legal counsel, the Native Women's Association of Canada has been forced to withdraw from the inquiry, as has the Women's Equality and Security Coalition, the Native Courtworkers Association, the Union of B.C. Indian Chiefs, the Carrier Sekani Tribal Council, the West Coast Women's Legal Education and Action Fund, and the End Violence Association. These groups were, in effect, shut out.

On August 11, 2011, the Commission, on its own initiative, hired two "independent" counsel, one to represent the Downtown Eastside groups, and one to represent the interests of Aboriginal women. Instead of correcting the problem, the appointment of these independent counsels constitutes additional discrimination. Not only have the Native Women's Association of Canada, and other women's organizations, been denied funding for legal counsel, and consequently, in effect, been excluded from the fact-finding hearing, they are now being spoken for by counsel whom they cannot control or instruct. They have not only been rendered voiceless, but another voice has been substituted for theirs, purporting to speak on their behalf.

The Inquiry is set to begin its hearings on October 11, 2011. It will now be an unfair process, which treats the most marginalized women as though their knowledge and participation does not matter.

Twelve Canadian experts on the inquiry process in Canada have written to the Attorney General of British Columbia to state that the Government of British Columbia's response to the Commissioner's ruling on standing and funding is shocking and unprecedented (letter attached). An independent inquirer is understood to have the mandate to determine his own process, including determining which individuals and groups need to participate in order for the process to be fair. These experts also find that the appointment of "independent" counsel introduces "a new form of discrimination."

This Inquiry, which many individual women and women's groups in British Columbia have hoped would be an opportunity for careful scrutiny of the conduct of police and justice officials, and of the factors which make Aboriginal women prey for violent men, cannot, as it is currently proceeding, fulfill these expectations. It has become a continuation of the discrimination against the most vulnerable women, not a correction of it.

4. Failure to implement a national, co-ordinated plan

Representatives of federal, provincial and territorial governments have held discussions about missing and murdered Aboriginal women recently in Gatineau, Quebec, and in Vancouver, British Columbia. They express “sympathy” for Aboriginal women and their families. But they continue to reject calls for a national inquiry, and a national action plan to address violence against Aboriginal women, and, in particular, the hundreds of missing and murdered Aboriginal women and girls.

On July 5, 2011 hundreds of women gathered on Parliament Hill in Ottawa to protest the violence and call for national action. Rona Ambrose, Minister responsible for the Status of Women for the Government of Canada said she sympathizes, but a national action plan is not necessary because governments “are already doing a lot.”⁶ The Government of Canada should be taking the lead to ensure that there is a national co-ordinated plan, but it is not.

The public assurances offered by the Government have little credibility. If governments are acting, there are still no visible results. The House of Commons Standing Committee on the Status of Women, when it issued its Interim Report in March 2011, clearly did not believe that governments are “already doing a lot.” The Auditor-General finds that there is no progress on improving fundamental social and economic conditions for on-reserve Aboriginal women and girls. The Native Women’s Association of Canada is calling for a national inquiry, and the Assembly of First Nations is calling for a Royal Commission (resolutions attached).

Further, there is no transparency. A report was issued by senior justice officials from the federal, provincial and territorial governments in September 2010, which includes a number of recommendations regarding how missing women cases should be handled. But there is no federal-provincial-territorial mechanism to ensure monitoring and implementation of these recommendations, nor is there any subsequent report on, or monitoring of, any changes to police procedures, protocols, training, accountability, co-ordination, or data collection.⁷

Meanwhile, violence against Aboriginal women continues. Statistics Canada’s most recent (2011) report shows that Aboriginal women are three times more likely than non-Aboriginal women to be victims of violence, and seven times more likely to be murdered.⁸ And family members, like Laurie Odjick, mother of

⁶ Heather Scoffield, Canadian Press, “Ministers sympathize, but won’t set up action plan”, July 5, 2011, online at: <http://www.globalmontreal.com/ministers-sympathize-with-aboriginal-women-but-wont-set-up-action-plan/4294974152/story.html>

⁷ Co-ordinating Committee of Senior Officials Missing Women Working Group Report, *Issues Related to the High Number of Murdered and Missing Women in Canada*, September 2010, online at: http://www.scics.gc.ca/CMFiles/830992005_e1MAJ-2112011-6827.pdf

⁸ Vivian O'Donnell and Susan Wallace, Statistics Canada, *Women in Canada: A Gender-Based Statistical Report, First Nations, Metis and Inuit Women*, July 2011, <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm> Shannon Brennan, Statistics Canada; *Violent victimization of Aboriginal women in the Canadian provinces, 2009*, online at: <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.htm#r6>

Maisy Odjick, a young Aboriginal woman who disappeared in 2008, continue to appear at demonstrations and vigils to try to prompt action.⁹

In light of Canada's reluctance to treat the documented violations of the human rights of Aboriginal women and girls as a national concern warranting immediate and effective action on the part of governments at all levels, the Canadian Feminist Alliance for International Action repeats its urgent request that the Committee initiate an inquiry under Article 8 and visit Canada to consult with Aboriginal women, non-governmental organizations and officials.

Please do not hesitate to contact us with any requests or questions.

Sincerely,



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⁹ Kristy Kirkup, Toronto Sun, "Advocates fight for answers about missing Aboriginal women", July 5, 2011, online at: <http://www.torontosun.com/2011/07/05/advocates-fight-for-answers-about-missing-aboriginal-women>