

MURDERS AND DISAPPEARANCES OF ABORIGINAL WOMEN AND GIRLS IN CANADA

**Briefing Paper
for
Thematic Hearing before the
Inter-American Commission on Human Rights**

147th Period of Sessions
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**Submitted By:
Native Women's Association of Canada
Canadian Feminist Alliance for International Action**

ORGANIZATIONS REPRESENTED

The Native Women's Association of Canada

The Native Women's Association of Canada (NWAC) is comprised of thirteen native women's organizations from across Canada and was incorporated as a non-profit organization in 1974. NWAC is founded on the collective goal to enhance, promote, and foster the social, economic, cultural and political well-being of First Nations and Métis women within First Nation and Canadian societies. NWAC is the voice of Aboriginal women in Canada.

NWAC's mission is to help empower women by being involved in developing and changing legislation which affects them, and by involving them in the development and delivery of programs promoting equal opportunity for Aboriginal women. NWAC engages in national advocacy measures aimed at legislative and policy reforms that promote equality for Aboriginal women and girls.

Canadian Feminist Alliance for International Action

The Canadian Feminist Alliance for International Action (FAFIA) is an alliance of more than eighty Canadian women's organizations founded following the Fourth World Conference on Women, Beijing 1995. One of the central goals of FAFIA is to ensure that Canadian governments respect, protect and fulfill the commitments to women that they have made under international and regional human rights treaties and agreements. FAFIA has made many submissions regarding Canada's compliance with its human rights obligations to United Nations treaty bodies and mandate holders. FAFIA also participated in the preparation of NGO submissions for the Universal Periodic Review of Canada by the Human Rights Council in 2009 and 2012. FAFIA engages in research and advocacy with governments in Canada regarding their implementation of human rights obligations.

Summary

Since the Native Women's Association of Canada (NWAC) and the Canadian Feminist Alliance for International Action (FAFIA) appeared before the Inter-American Commission on Human Rights in March 2012, violence against Aboriginal women and girls, including by officers of the Royal Canadian Mounted Police, is an issue with an increasingly high public profile, and in general, tensions between Aboriginal peoples and Canada are at a high point. The Government of Canada and the RCMP have responded to recent reports regarding violence against Aboriginal women and girls in a defensive and retaliatory manner, which does not promise to lead to better protection of the rights of Aboriginal women and girls.

NWAC and FAFIA have been seeking co-operation and co-ordinated action from governments in Canada for many years. Now we seek the assistance of the Inter-American Commission on Human Rights. The Inter-American Commission can encourage and assist Canada to address the violations of the human rights of Aboriginal women and girls which are taking place, and to put in place the programs, protocols, standards, and practices that will meet the nation's obligation to exercise due diligence to prevent, protect, investigate and remedy violence against Aboriginal women and girls.

We request that the Inter-American Commission on Human Rights make a visit to Canada in order to investigate and to assist Canada. We also request that the Inter-American Commission on Human Rights issue a press release regarding the murders and disappearances of Aboriginal women and girls in Canada, following the thematic briefing on March 12, 2013.

Violations of the Human Rights of Aboriginal Women and Girls in Canada

I. Introduction

Violence against Aboriginal women and girls in Canada is a problem of massive proportions. Aboriginal women in Canada report rates of violence, including domestic violence and sexual assault, 3.5 times higher than non-Aboriginal women.¹ Aboriginal women also report the most severe forms of violence, including being sexually assaulted, beaten, choked, or threatened with a gun or a knife.² Young Aboriginal women are five times more likely than other Canadian women of the same age to die of violence.³ Aboriginal women and girls experience both high levels of sexual abuse and violence in their own families and communities, and high levels of stranger violence in the broader society.⁴ Between 1997 and 2000, the rate of homicide for Aboriginal women was almost seven times higher than the rate for non-Aboriginal women.⁵

To date, the Native Women's Association of Canada (NWAC) has documented over 600 cases of missing and murdered Aboriginal women and girls throughout Canada over the past 30 years.⁶ For the

¹ Jodi-Anne Brzozowski, Andrea Taylor-Butts and Sara Johnson, "Victimization and offending among the Aboriginal population in Canada", *Juristat*, Vol. 26, no. 3, Canadian Centre for Justice Statistics, 2006, available at <http://dsp-psd.tpsgc.gc.ca/Collection-R/Statcan/85-002-XIE/85-002-XIE2006003.pdf>

² Statistics Canada, Shannon Brennan, *Violent victimization of Aboriginal women in the Canadian provinces, 2009*, available at <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.htm#n6>

³ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Aboriginal Women*, September 2009, at 1, available at <http://www.amnesty.org/en/library/info/AMR20/012/2009/en>

⁴ See Brzozowski, *supra* note 5.

⁵ Vivian O'Donnell and Susan Wallace Statistics Canada, "First Nations, Métis and Inuit Women," *Women in Canada: A Gender—Based Statistical Report*, July 2011, available at <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>

⁶ Native Women's Association of Canada, *What Their Stories Tell Us: Research findings from the Sisters In Spirit initiative (What Their Stories Tell Us)*, at 19, available at http://www.nwac.ca/sites/default/files/reports/2010_NWAC_SIS_Report_EN.pdf. Since this report was published in 2010, more disappearances and murders of

period from 2000 to 2008 alone, NWAC documented 153 murders of Aboriginal women.⁷

Despite these disturbing statistics, Canada has failed to recognize the seriousness of the human rights violations that are occurring. It has failed to discharge its obligation to exercise due diligence to prevent this violence, investigate reports of disappearances and murders, and bring perpetrators to justice. In particular, Canada has failed to put in place a comprehensive, national plan to stop this violence, including measures such as intensive training, protocols regarding reports of missing Aboriginal women and girls, systems for disaggregated data collection, co-ordination across jurisdictions, and effective accountability and oversight mechanisms.⁸ 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.⁹

These police failures are integrally linked to the fact that Aboriginal women are among the most discriminated against and socially and economically disadvantaged groups in Canada. This social and economic marginalization not only makes Aboriginal women and girls 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 and girls are “transient,” “runaways” “live a risky lifestyle,” or “will show up when they want to,” are often used to justify failures to respond to reports of missing women.¹⁰ The vulnerability of Aboriginal women to sexualized and racialized violence is created, in part, by the lack of response to it by the police and the courts.¹¹

Aboriginal women and girls have been documented by the Native Women's Association of Canada, and the number is now over 600.

⁷ *Ibid.*

⁸ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada (No More Stolen Sisters)*, at 22, available at <http://www.amnesty.ca/amnestynews/upload/AMR200122009.pdf>

⁹ *Ibid.*

¹⁰ Native Women's Association of Canada, *Voices of Our Sisters In Spirit: A Report to Families and Communities* (2nd Edition March 2009) (*Voices of Our Sisters In Spirit*) at 96, available at http://www.nwac.ca/sites/default/files/download/admin/NWAC_VoicesofOurSistersInSpiritII_March2009FINAL.pdf.

¹¹ Kelly A. MacDonald, Justice for Girls, *Justice System's Response: Violence against Aboriginal Girls*, submitted to the Honourable Wally Oppal, Attorney General of

The safety and protection of Aboriginal girls is a serious issue. Justice for Girls, a British Columbia-based non-governmental organization, reports that “Indigenous girls in Canada face extreme levels of violence as well as deeply rooted and pervasive social inequality....”¹² 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....”¹³

On February 13, 2013, Human Rights Watch released a report of field research undertaken in northern British Columbia during five weeks in 2012. The report, entitled *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*¹⁴ documents incidents of direct police abuse of Aboriginal women and girls including physical and sexual assaults, rape, strip searches by male officers, and verbal sexist and racist abuse.

As Justice for Girls and Human Rights Watch have documented, Aboriginal women and girls face discrimination by the criminal justice system because of, *inter alia*, 1) failure to prosecute crimes based on discriminatory notions of victim credibility and victim blaming, and 2) mistreatment and abuse by police officers both inside and outside of custody.¹⁵

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>

¹² 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

¹³ Justice for Girls, *Human Rights Violations against Indigenous Teen Girls in British Columbia: Submission prepared for the UN Special Rapporteur on Violence Against Women* (October 2011).

¹⁴ Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, February 2013, available at <http://www.hrw.org/sites/default/files/reports/canada0213webwcover.pdf>

¹⁵ See reports from Justice for Girls and Human Rights Watch.

Aboriginal women and girls face severe economic and social hardship, which increases their vulnerability to violence, and constrains their ability to escape it. These social and economic disadvantages, which are rooted in the historical and modern day effects of colonization, include high rates of poverty and unemployment, lower educational attainment, poor health, lack of access to clean water, and overcrowded, substandard housing.

Statistics Canada's most recent data on the social and economic conditions of Aboriginal women and girls¹⁶ reveals that:

- 37 per cent of First Nations females (off-reserve) live in poverty (below Canada's low-income cut-offs), as do 23 per cent of Métis and Inuit females. This is more than double the rate for non-Aboriginal women; (there are no poverty statistics for First Nations women living on reserve);
- 18 per cent of Aboriginal women aged 15 and over are single parents, compared with 8 per cent of non-Aboriginal women, and they have larger families than single non-Aboriginal women;
- 44 per cent of Aboriginal women and girls living on reserves live in homes that need major repairs; 31 per cent of Inuit women and girls live in crowded homes, compared to 3 per cent of non-Aboriginal females. In reserve communities, 26 per cent of First Nations women and girls were living in crowded conditions;
- 35 per cent of Aboriginal women aged 25 and over have not graduated from high school. Only 9 per cent of Aboriginal women aged 25 and over have a university degree, compared with 20 per cent of their non-Aboriginal counterparts;
- 13.5 per cent of Aboriginal women are unemployed, compared with 6.4 per cent for non-Aboriginal women. Among First Nations women, those living on reserve experienced the highest unemployment rate (20.6 per cent);¹⁷

¹⁶ O'Donnell, V. and Wallace, S., Statistics Canada, *First Nations, Métis and Inuit Women*, 2011, available at <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm#a29>

¹⁷ When the labour market downturn began between 2008 and 2009, Labour Force Survey (LFS) data revealed that Aboriginal people experienced sharper declines in employment rates than non-Aboriginal people. According to the LFS, between 2008 and 2009, employment rates fell by 3.2 percentage points among Aboriginal people and 1.9 percentage points among non-Aboriginal people. As a result, the already existing gap between the groups widened. At the same time, the unemployment rate rose more sharply for Aboriginal than non-Aboriginal people: *ibid.*

- Aboriginal women are at greater risk than non-Aboriginal women of having their children removed by authorities under child protection legislation because of “neglect.” “Neglect” is often legislatively defined in a way that makes it the equivalent of poverty.¹⁸ Aboriginal children are nearly ten times more likely to be “in care” than non-Aboriginal children,¹⁹ and experts say that there are more Aboriginal children in care now than there were during the residential school era.²⁰ Women who leave violent relationships often have to resort to reliance on social assistance, which does not provide them with enough income to support themselves and their children. Children can then be removed because of “neglect”, or because the children have witnessed violence.²¹ Aboriginal women are afraid to report violence, and often afraid to leave violent partners because of fear of removal of their children.²²
- Aboriginal women and girls are also disproportionately criminalized and incarcerated in Canada. The Aboriginal population in Canada is approximately 3.8 percent (in 2006), yet 34 percent of incarcerated women are Aboriginal, and in the last 10 years the number of federally-sentenced Aboriginal women in custody has increased by 86.4 per cent, compared to 25.7 per cent over the same period for Aboriginal men.²³
- 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.²⁴

¹⁸ For example, the British Columbia Ministry of Children and Families’ definition of “neglect” can be found at:

http://www.mcf.gov.bc.ca/child_protection/keeping_kids_safe.htm

¹⁹ Pivot Legal Society, “Broken Promises: Parents speak about BC’s child welfare system,” October 2008, at 3. Online:

<http://www.pivotlegal.org/sites/pivotlegal.org/files/BrokenPromises.pdf>

²⁰ CTV News, “Native children in care surpass residential school era”, July 31, 2011, available at <http://www.ctvnews.ca/native-children-in-care-surpass-residential-school-era-1.677743>

²¹ The Poverty and Human Rights Centre, *The Vicious Circle*, at 17, available at <http://povertyandhumanrights.org/wp-content/uploads/2012/10/The-Vicious-Circle.pdf>

²² *Voices of Our Sisters In Spirit*, at 95.

²³ Howard Sapers, “Annual Report of the Office of the Correctional Investigator 2010-2011,” 2011, available at <http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20102011-eng.aspx#ss5>

²⁴ *Ibid* at 29.

Aboriginal women and girls are funneled into prostitution because of their economic and social marginalization, and engagement in prostitution further increases levels of vulnerability to coercion, abuse and violence;

- There is a higher incidence of chronic health conditions among Aboriginal women;
- In 2001, the estimated life expectancy at birth for Aboriginal females was five years less than their non-Aboriginal counterparts.

In a December 2011 statement, United Nations Special Rapporteur on Indigenous Peoples, James Anaya, expressed concern about the serious situation of Attawapiskat First Nation in remote northern Ontario, many of whose 1,800 members live in unheated shacks or trailers, with no running water.²⁵

At the same time, Mr. Anaya noted: "The social and economic situation of the Attawapiskat seems to represent the condition of many First Nation communities living on reserves throughout Canada, which is allegedly akin to third world conditions. Yet, this situation is not representative of non-Aboriginal communities in Canada, a country with overall human rights indicators scoring among the top of all countries of the world. Aboriginal communities face vastly higher poverty rights, and poorer health, education, employment rates as compared to non-Aboriginal people."

He noted further that according to the information he received, "First Nations communities are systematically underfunded as compared to non-Aboriginal towns and cities...[and] systematic underfunding...exacerbates their already diminished capacity to attend to the social and economic interests of their members." The Government of Canada provides less funding per capita for education

²⁵ United Nations Office of the High Commissioner for Human Rights, "Canada / Attawapiskat First Nation: statement by the UN Special Rapporteur on indigenous peoples," 20 December 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11743&LangID=E> . James Anaya made a request in February 2012 to visit Canada. Although Special Rapporteurs have an open invitation to visit Canada, they require permission. Mr. Anaya's request has not been answered. See: Andy Radia, Political Points, "UN special advisor James Anaya refutes claims that he was denied visas to enter Canada" January 10, 2013, available at <http://ca.news.yahoo.com/blogs/canada-politics/un-special-advisor-james-anaya-refutes-claims-denied-212033035.html>

and child welfare for children on reserves.²⁶ Aboriginal women and girls are seriously affected by the inadequacy of health services, housing, shelters for victims of violence, and support services, particularly in northern remote communities.

Overall, these conditions reflect entrenched sex and race discrimination. Aboriginal women in Canada face discrimination on multiple fronts: as women within their home communities due to the patriarchal effects of colonialism, and as women and Aboriginal persons in mainstream society.²⁷

State policies which produce and reproduce the serious social and economic deprivations suffered by Aboriginal women and girls, combined with the discrimination and indifference of authorities towards Aboriginal women, result in impunity for many of the crimes committed against them, and permit the violence to continue.

The Native Women's Association of Canada, and the Canadian Feminist Alliance for International Action believe that the above-mentioned patterns and practices amount to serious violations by Canada 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,"²⁸ (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 police and government 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"). Aboriginal women and girls in Canada lack access to effective

²⁶ See, for example, CTV News, "Tribunal hears First Nations child welfare case: Does Ottawa discriminate?" February 25, 2013, available at <http://www.ctvnews.ca/canada/tribunal-hears-first-nations-child-welfare-case-does-ottawa-discriminate-1.1170503#ixzz2Mbls3ImF>

²⁷ 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>

²⁸ Street Children case (Villagrán Morales et al.), 1999 Inter-Am. C.H.R. (ser. C) No. 63, at ¶ 144 (Nov. 19, 1999).

remedies for the systemic race and sex discrimination embedded in institutional policies and practices.

In addition, we believe that the above-mentioned factors amount to serious violations of many provisions in international human rights treaties to which Canada is signatory.

II. NWAC Data on Missing and Murdered Aboriginal Women and Girls

Official data about murders and disappearances of Aboriginal women and girls in Canada is incomplete. The Homicide Survey does not include reports of missing women. Also, in 50% of all recorded homicides the Aboriginal identity of the victims is not known.²⁹ Some police forces, for example Canada's national police force — the Royal Canadian Mounted Police — do not collect this information.³⁰

In light of the incompleteness of official data and because of growing concern within Aboriginal communities, non-governmental organizations began to collect information about murders and disappearances of Aboriginal women and girls. The first of these reports was *Stolen Sisters*,³¹ a 2004 report by Amnesty International Canada, which documented the endemic discrimination and high rates of violence against Aboriginal women and girls.

In 2005, with advice from Statistics Canada, and funding from Status of Women Canada — a Ministry of the Government of Canada — NWAC began the Sisters In Spirit project. Sisters in Spirit collected information about missing and murdered Aboriginal women and girls across Canada, and constructed an important, reliable database of information drawn from public sources, mainly police and media

²⁹ Statistics Canada, Canadian Centre for Justice Statistics, Maire Sinha, *Measuring Violence Against Women: Statistical Trends*, February 25, 2013, at 19, available at <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>

³⁰ Ibid. See note 15 to text box 1.5.

³¹ Amnesty International Canada, *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*, 2004, available at <http://www.amnesty.org/en/library/asset/AMR20/003/2004/en/c6d84a59-d57b-11dd-bb24-1fb85fe8fa05/amr200032004en.pdf>; see also Amnesty International Canada, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada*, 2009, available at <http://www.amnesty.ca/sites/default/files/amr200122009enstolensistersupdate.pdf>

reports. It has published analyses of this data, and has been an essential source of information and support for the families of the missing and murdered Aboriginal women and girls.

As of March 31, 2010, NWAC recorded information for 582 cases. Of the 582 cases, 115 (20%) involve missing women and girls, 393 (67%) involve women or girls who died as the result of homicide or negligence, and 21 cases (4%) fall under the category of suspicious death (incidents that police have declared natural or accidental but that family or community members regard as suspicious). There are 53 cases (9%) where the nature of the case remains unknown, meaning it is unclear whether the woman was murdered, is missing or died in suspicious circumstances.³²

Through its research NWAC also found:

- Between 2000 and 2008, 153 cases of murder have been identified in NWAC's Sisters In Spirit database. These women represent approximately 10% of the total number of female homicides in Canada despite the fact that Aboriginal women make up only 3% of the total female population in Canada. The majority of women and girls in NWAC's database were murdered. **115 women and girls were still missing in 2010.**
- **The majority of disappearances and deaths of Aboriginal women and girls occurred in the western provinces** of Canada. Over two thirds of the cases were in British Columbia, Alberta, Manitoba, and Saskatchewan.
- A great majority of the women were young. More than half of the women and girls were **under the age of 31**.
- Many of the **women were mothers**. Of the cases where this information is known, 88 per cent of missing and murdered women and girls **left behind children and grandchildren**.
- Aboriginal women and girls are as likely to be killed by an acquaintance or stranger as they are by an intimate partner. **Aboriginal women and girls are more likely to be killed by a stranger than non-Aboriginal women.**
- **In 2010, nearly half of murder cases remained unsolved.** Nationally, 53 per cent of murder cases have been cleared by charges of homicide, while no charges had been laid in forty per cent of cases. However, **there are differences in clearance rates by province**. The clearance rate for murdered women and girls

³² *What Their Stories Tell Us* at 18.

ranges from a low 42 per cent in Alberta to 93 per cent in Nunavut.³³

NWAC believes that the scope of the violence is far greater than these documented cases. The cases in our database are the “known cases.” NWAC and most Aboriginal and human rights organizations agree that the count of missing and murdered Aboriginal women and girls is likely much higher.

NWAC found that the majority of affected families report multiple issues and problems with the justice system’s response to the disappearance or murder of their loved one. NWAC has heard on many occasions that the families experienced a lack of responsiveness, disrespectful, confusing or incorrect information, poor adherence to policies and protocols and an overall discounting of family information from police service personnel.³⁴

III. The Nature of the Problem and the State’s Human Rights Obligations as Recognized by International Expert Bodies

Consistently, two facets of this problem have been identified by Aboriginal women, families, and non-governmental organizations, including NWAC, FAFIA, and Amnesty International. These integrally connected facets are:

- the failure of police to protect Aboriginal women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered; and
- the failure of Canada to remedy the disadvantaged social and economic conditions in which Aboriginal women and girls live, which make them vulnerable to violence and unable to escape from it.³⁵

In periodic reviews of Canada that have taken place between 2005 and 2012, international human right bodies have recognized the seriousness of this problem. They have also recognized the two interlocking facets of it, and the different state obligations that are

³³ *What Their Stories Tell Us* at ii.

³⁴ *Voices of Our Sisters In Spirit* at 96.

³⁵ See statistics above, and refer to, Vivian O'Donnell and Susan Wallace, Statistics Canada, *First Nations, Metis and Inuit Women*, July 2011, available at <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>

engaged regarding policing and Aboriginal women's social and economic conditions. United Nations treaty bodies have commented with concern, sometimes at length, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture, the Committee on the Rights of the Child.³⁶

For example, in 2008, the CEDAW Committee in its Concluding Observations on its review of Canada's compliance with its obligations under the *Convention on the Elimination of All Forms of Discrimination against Women*, stated:

31. Although the Committee notes that a working group has been established to review the situation relating to missing and murdered women in the State party and those at risk in that context, it remains concerned that hundreds of cases involving Aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished.

³⁶ 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 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>; Committee on the Elimination of Racial Discrimination, Concluding observations: Canada, UN Doc. CERD/C/CAN/CO/18, 25 May 2007, at ¶ 20–21, 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 ¶ 30–32 and ¶ 43–46, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CAN-CO-7.pdf>; Committee on the Elimination of Racial Discrimination, Concluding observations: Canada, UN Doc. CERD/C/CAN/19–20, 9 March 2012, at ¶ 17, available at <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.19-20.pdf>; Committee against Torture, Concluding observations: Canada. UN Doc. CAT/C/CAN/CO/6, 25 June 2012, at ¶ 20, available at <http://www2.ohchr.org/english/bodies/cat/cats48.htm>; Committee on the Rights of the Child, Concluding observations: Canada, UN Doc. CRC/C/CAN/CO/3–4, 5 October 2012, at ¶ 48, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-CAN-CO-3-4_en.pdf

32. The Committee urges the State party to examine the reasons for the failure to investigate the cases of missing or murdered Aboriginal women and to take the necessary steps to remedy the deficiencies in the system. The Committee calls upon the State party to urgently carry out thorough investigations of the cases of Aboriginal women who have gone missing or been murdered in recent decades. It also urges the State party to carry out an analysis of those cases in order to determine whether there is a racialized pattern to the disappearances and take measures to address the problem if that is the case.³⁷

At the same time, the CEDAW Committee recommended that Canada:

“develop 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, low income and high rates of violence...”³⁸

Similarly, during the Universal Periodic Review of Canada in 2009 by the Human Rights Council, recommendations were made to Canada regarding violence against women, and against indigenous women in particular.³⁹ Canada accepted the underlying principles in these recommendations, which 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 extreme violence against Aboriginal women and girls in Canada has elicited concern from other United Nations human rights experts.

³⁷ UN Committee on the Elimination of Discrimination against Women, CEDAW/C/CAN/CO/7, 7 November 2008, online at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CAN-CO-7.pdf>

³⁸ Ibid. at para. 44.

³⁹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/11/17, 5 October 2009 at paras. 33 – 38, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/152/99/PDF/G0915299.pdf?OpenElement>. See also Report of the Working Group on the Universal Periodic Review, Canada, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/11/17/Add.1, 8 June 2009, at para. 46, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/49/PDF/G0913949.pdf?OpenElement>

In her 2012 report on Gender-based Killings, the United Nations Special Rapporteur on Violence Against Women took note of the high rate of violence against Aboriginal women in Canada, and noted the “intersection of different layers of discrimination based on race, ethnic identity, sex, class, education and political views [that] further disenfranchises indigenous and aboriginal women, reproducing a multi-level oppression that culminates in violence.”⁴⁰

While not focusing specifically on Canada, James Anaya, the UN Special Rapporteur on the rights of indigenous peoples, stated in September 2012 that violence against indigenous women and girls is one of the most pressing issues facing indigenous peoples today.⁴¹

Treaty body recognition of the seriousness of the human rights situation in Canada is highlighted by the CEDAW Committee’s announcement in December 2011 that it has initiated an Inquiry on missing and murdered Aboriginal women in Canada under Article 8 of the CEDAW Optional Protocol, in light of its review of Canada and formal requests filed by NWAC and FAFIA.⁴² 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.⁴³ This Inquiry procedure has only been utilized once before in the similar situation of systematic disappearances and murders of women in Juarez, Mexico.⁴⁴

⁴⁰ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, to the United Nations Human Rights Council, 23 May 2012, A/HRC/20/16. at ¶ 61 – 65, available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.16.En.PDF>

⁴¹ UN News Centre, “Violence against indigenous women, Property rights, most pressing indigenous issues — UN expert”, 18 September 2012, available at <http://www.un.org/apps/news/story.asp?NewsID=42924#.UPRhbKxTFgg>

⁴² 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>

⁴³ *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, A/RES/54/4, 15 October 1999.

⁴⁴ 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).

IV. State Response

Despite years of lobbying by many diverse non-governmental organizations, the Government of Canada, along with the provincial and territorial governments, have not put in place a comprehensive and effective national action plan for addressing the root causes and consequences of the violence against Aboriginal women and girls. Nor is there a comprehensive national 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.

In its latest report, issued in December 2012 Amnesty International Canada notes few gains:

In recent years, the federal government has announced various initiatives and programs with respect to violence against Indigenous women. While many of these initiatives are welcome, they do not constitute a coordinated strategy and, taken together, still fall short of the comprehensive action needed to address what is, by any measure, one of the most serious human rights problems in the country.⁴⁵

The Government of Canada has not yet acknowledged that violations of the human rights of Aboriginal women and girls are occurring in Canada. Nor has it acknowledged that it has obligations to 1) exercise due diligence to prevent, investigate and remedy the violence and 2) ensure that the rights of Aboriginal women and girls to life, security of the person, and equal protection and benefit of the law, and to equality in social and economic conditions, are fully realized.

V. Recent Developments

1. Heightened Tensions

In recent months, tension between Aboriginal peoples and the Government of Canada has increased. In March 2012, the Government of Canada introduced the second of two omnibus budget bills, Bill

⁴⁵ Amnesty International Canada, *Matching International Commitments with National Action: A Human Rights Agenda for Canada*, December 2012, at 13, available at <http://www.amnesty.ca/sites/default/files/canadaaihra19december12.pdf>

C-45,⁴⁶ which amended more than sixty pieces of legislation. It became law in December 2012, despite protest by the public and Opposition Parties. Bill C-45 made changes to the *Environmental Assessment Act* and the *Navigable Waters Act* which have the effect of stripping environmental protections from most of Canada's lakes and rivers, many of which are subject to treaties and land claims, without consultation with Aboriginal peoples. The same omnibus budget bill amended the *Indian Act* to make it easier to designate reserve lands for use by non-Band members, again without consultation with Aboriginal peoples.

There is a line of court decisions, including decisions from the Supreme Court of Canada, recognizing that Aboriginal peoples are legally entitled to consultation when their treaty and inherent rights are affected by legislative or other changes.⁴⁷ Articles 18, 19, and 32 of the United Nations *Declaration on the Rights of Indigenous Peoples* also recognize the right of indigenous peoples to be consulted when their lands, resources and treaty and inherent rights may be affected.⁴⁸ However, the entitlement to consultation is not consistently observed.

In December 2012, Theresa Spence, Chief of the Attawapiskat First Nation, began a six-week-long hunger strike because of the appalling conditions in which her people continue to live. A new grass roots movement has sprung up called Idle No More, and Aboriginal women, young people, elders and leaders, have held meetings and demonstrations across Canada, on some occasions blockading bridges and rail lines, to protest against the continuing impoverishment of Aboriginal peoples, the failure to consult when development will affect their lands and resources, and the failure to respect treaty and inherent rights.⁴⁹

⁴⁶ Bill C-45, *A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*, available at <http://parl.gc.ca/HousePublications/Publication.aspx?DocId=5765988>

⁴⁷ See for example, Maria Morellato, "The Crown's Constitutional Duty to Consult and Accommodate Aboriginal and Treaty Rights," Research Paper for the National Centre for First Nations Governance, February 2008, available at http://fngovernance.org/resources_docs/Crown_Duty_to_Consult_Accommodate.pdf

⁴⁸ United Nations Declaration on the Rights of Indigenous Peoples, available at www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

⁴⁹ For information about Idle No More see CBC News, "9 Questions about Idle No More", January 5, 2013, available at <http://www.cbc.ca/news/canada/story/2013/01/04/f-idlenomore-faq.html>; see also,

There is a widespread call from First Nations people for a change in the relationship between First Nations and the Crown. First Nations have publicly challenged the Government of Canada's long-standing failure to treat them as sovereign nations entitled to respect as equals. First Nations peoples have become engaged in newly invigorated discussion, self-education, and activism, in which they have been joined by many non-Aboriginal social justice, human rights and environmental organizations.

On January 11, 2013, some First Nations leaders met with the Prime Minister of Canada in an effort to reset the relationship between First Nations and the Crown on a footing of respect and equality. Assembly of First Nations National Chief, Shawn A-in-chut Atleo, outlined seven actions considered necessary to moving forward. One of the seven actions requested was:

Immediate Commitment [by the Government of Canada] to the establishment of a National Public Commission of Inquiry on Violence Against Indigenous Women and Girls, including special focus on murdered and missing indigenous women, and the broader factors that lead to increased vulnerability among Indigenous peoples.⁵⁰

The fact that this was one of seven fundamental requirements for improving relations reflects the importance that is attached by the Aboriginal community to the issue of violence against Aboriginal women and girls, and the failures of police and government to protect them.

2. Missing Women Commission of Inquiry Issues Report

On September 27, 2010, the Government of British Columbia established the Missing Women Commission of Inquiry, naming the former Attorney General of British Columbia, Wally Oppal, Q.C., as Commissioner. The Commission had a mandate to inquire into the investigations into the disappearances and murders of women from

Candice Bernd, Truthout, "Idle No More: From Grassroots to Global Movement", January 20, 2013, available at <http://truth-out.org/news/item/14165-idle-no-more-from-grassroots-to-global-movement>

⁵⁰ Letter from Shawn A-in-chut Atleo, National Chief, to Prime Minister Stephen Harper, January 11, 2013, available at http://www.afn.ca/uploads/files/13-01-11_nc_letter_to_pm_final.pdf

the Downtown Eastside of Vancouver between January 1997 and February 2002, by police forces in British Columbia and the decision of the B.C. Criminal Justice Branch in January 1998 to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement and aggravated assault.⁵¹ The final report of the Missing Women Commission of Inquiry, entitled *Forsaken*, was issued to the public on December 17, 2012.⁵²

Both the mandate and the work of the Commission has been criticized as flawed in several respects: 1) its terms of reference were limited to a particular time period, namely January 23, 1997 to February 5, 2002, and only to the disappearances of women from the Downtown Eastside of Vancouver;⁵³ 2) it included no specific focus on missing and murdered *Aboriginal* women, despite their disproportionate representation amongst the victims in British Columbia; 3) *no Aboriginal groups participated in the process* because NWAC and other key Aboriginal organizations were denied funding for legal counsel and could not participate on an equal footing with government and police officials who were provided with publicly funded counsel, resulting in a lack of expertise regarding systemic race and sex discrimination available to the Commission; 4) its focus was on police and prosecutorial failures, not on broader governmental failures.

On this last point, the Inquiry report notes that “Eradicating the problem of violence against women involves addressing the root causes of marginalization, notably sexism, racism and the ongoing pervasive effects of the colonization of Aboriginal peoples — all of which contribute to the poverty and insecurity in which many women

⁵¹ Missing Women Commission of Inquiry, *Terms of Reference* (2010), available at <http://www.missingwomeninquiry.ca/>.

⁵² *Forsaken: The Report of the Missing Women Commission of Inquiry*, The Honourable Wally T. Oppal QC, Commissioner, November 19, 2012, available at <http://www.missingwomeninquiry.ca/obtain-report/>

⁵³ See terms of reference and complete information on the Missing Women Commission of Inquiry, available at <http://www.missingwomeninquiry.ca/>. the Commissioner had no mandate to engage in fact-finding with respect to the investigations of disappearances and murders along the Highway of Tears in northern British Columbia. Missing Women Commission of Inquiry, *August 25, 2011 – Dates and Venues Announced for Missing Women Commission of Inquiry Community Forums in Northern B.C.*, available at <http://www.missingwomeninquiry.ca/2011/08/august-25-2011-dates-and-venues-announced-for-missing-women-commission-of-inquiry-community-forums-in-northern-b-c/>.

live.” The Inquiry report notes that these issues are most worthy of consideration, but are “beyond the scope of the Inquiry.”⁵⁴

With respect to the police investigations of disappearances of women from the Downtown Eastside of Vancouver, Commissioner Oppal found that “the police investigations into the missing and murdered women were blatant failures.” He identified seven critical police failures:

- ***Poor report taking and follow up on reports of missing women***

The investigations of the missing women and suspected multiple homicides were negatively affected by poor report taking and follow up on the individual women’s disappearances. When women were reported missing, the investigations were not treated as urgent, proper investigation procedures were not followed and there were unexplained gaps in investigations. The police treated family members and other reporters in a degrading manner, and failed to communicate sufficiently with them. When investigations involved multiple police agencies, they lacked inter-jurisdictional cooperation, which resulted in problems and delays.⁵⁵

- ***Faulty risk analysis and risk assessments***

Police operated under the erroneous assumptions that if there was no body there had been no crime and that the women were transient because of their lifestyles. These assumptions resulted in poor decision making and resource allocation. Despite mounting evidence to the contrary, the police refused to accept that the women were likely murdered, refused to accept that a serial killer might be preying on prostituted women and failed to take steps to prevent women from being killed in the future.⁵⁶

- ***Inadequate proactive strategy to prevent further harm to women in the DTES***

Despite the availability of evidence that women in prostitution in the Downtown Eastside experienced extraordinarily high rates of violence, there was a “near complete failure of the police” to take steps to protect these women from violence. The police failed to provide

⁵⁴ Ibid., Volume I, at 5.

⁵⁵ *Forsaken: The Report of the Missing Women Commission of Inquiry* (19 November 2012) Executive Summary at 54, available at <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

⁵⁶ *Ibid* at 60.

information or warnings to the women prostituted in the Downtown Eastside or Aboriginal communities.⁵⁷

- ***Failure to consider and properly pursue all investigative strategies***

The police failed to use an Aboriginal-specific investigation strategy, unreasonably restricted the involvement of family members, the community and media in the investigations, failed to follow up on tips, mismanaged informants and information sources, delayed pursuit of a suspect-based strategy and failed to confirm or rule out suspects, and made inadequate use of other investigative avenues, such as surveillance, undercover operations, search warrants and forensic evidence. The Commissioner concluded that one of the most “egregious investigative errors” occurred in March 1997 when the police ignored the report of a prostituted woman, Ms. Anderson.⁵⁸ Ms. Anderson was picked up from the Downtown Eastside by Pickton, brought to his property and was handcuffed and stabbed by him. She defended herself, cutting him in the process, and escaped, collapsing on the street, where passers-by took her to the hospital. She arrived at hospital with the knife still in her hand and the handcuff still on her wrist. Pickton’s blood was on the knife, and when he arrived at the same hospital later that day he had a key in his clothing that matched the handcuff. The police ignored the information she provided and the Crown prosecutors decided to drop charges against Pickton because they believed Ms. Anderson would not be a credible and reliable witness.

- ***Failure to follow Major Case Management practices and policies***

The missing women investigations clearly fell outside the normal parameters of day-to-day policing: it was a multi-victim, multi-jurisdiction and potentially multi-offender case. It involved many police officers over a long period of time. Complex investigations like this one could only be properly managed using Major Case Management techniques. Despite the fact that Major Case Management techniques were broadly understood and were being applied, the police failed to develop and follow basic management principles and practices, implement effective team structures, an efficient system for planning and file administration, and ensure that personnel had the requisite managerial skills. The Commissioner said that he found it “astounding”

⁵⁷ *Ibid* at 66, 67, 69.

⁵⁸ *Ibid* at 71.

that the police failed to learn and incorporate the lessons from the *Bernardo Review*, a previous inquiry on the failure of police to properly investigate multiple women's disappearances in connection with the serial killer Paul Bernardo.⁵⁹

- ***Failure to address cross-jurisdictional issues and ineffective coordination between police forces and agencies***

The Commissioner found that the "inability to fully address cross-jurisdictional issues was a critical police failure, substantially limiting the effectiveness of the investigations and that these failures continued throughout the entire five-year period" under consideration. The multiple police forces all had different opinions on who was responsible for what and there was ineffective coordination between the multiple RCMP detachments and municipal police forces involved. He concluded that the missing women investigations failed largely because they were approached as isolated investigations, rather than as a case as a whole.⁶⁰

- ***Failure of internal review and external accountability mechanisms***

The Commissioner noted that the missing women investigations were "hugely challenging" and therefore it would be expected that when the police performed internal reviews there would be some findings of error. However, both internal review mechanisms and external accountability mechanisms were highly flawed and failed to make any critical or constructive finding. The failure of these mechanisms to catch police error perpetuated the failures of the missing women investigations.⁶¹

Forsaken includes 43 recommendations, which are intended to improve some policing standards, processes, and structures in British Columbia. Some recommendations are directed to ensuring that police meet their obligation to provide equal protection of the law, without discrimination on the basis of sex or race, which, the Inquiry found, women in British Columbia did not have the benefit of during the period in question.⁶²

The Government of British Columbia has not made a comprehensive response to the report, and non-governmental organizations are also

⁵⁹ *Ibid* at 82.

⁶⁰ *Ibid* at 85-86.

⁶¹ *Ibid* at 91-92.

⁶² *Forsaken*, Executive Summary at 118.

still studying the report's findings and recommendations. Whether this report's recommendations are implemented or not, they do not address the government and police failures with respect to murders and disappearances of Aboriginal women and girls in Canada as a whole. Nonetheless, the findings of Commissioner Oppal with respect to police failures echo reports from Aboriginal families across the country, and confirm the inadequacies in existing police systems, responses, and accountability mechanisms.

3. Human Rights Watch

- ***The Report***

On February 13, 2013, Human Rights Watch released a report based on its field research in northern British Columbia, along the Highway of Tears, the location of many Aboriginal communities.⁶³ This report documents "not only how indigenous women and girls are under-protected by the police but also how some have been the objects of outright police abuse."

Human Rights Watch interviewed 50 women and girls and 37 other witnesses, including family members and community service providers. The report documented the women's accounts of physical assaults, including on girls under 18, questionable use of force, including tasing, strip searches of women by male officers, detention without food, washing facilities and medical attention, aggressive treatment during arrest, and physical and sexual abuse. One woman reported that in July, four police officers took her to a remote location, raped her, and threatened to kill her if she told anyone. Human Rights Watch was also told of indigenous women and girls being sexually abused in holding cells after passing out due to intoxication, and waking without any clothing on the bottom half of their bodies. One girl reported having her arm broken by an RCMP Officer who was attending a domestic violence call. A twelve year old girl said she was bitten on the leg by a police dog while she was hiding in a box. Human Rights Watch was told that a seventeen year old girl was punched repeatedly by an RCMP Officer while she was handcuffed in the backseat of a police car.

⁶³ Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, February 2013, available at <http://www.hrw.org/sites/default/files/reports/canada0213webwcover.pdf>

Shawn A-in-chut Atleo, Grand Chief of the Assembly of First Nations said: "The stories shared in this report are heart-wrenching and absolutely appalling, particularly given this is only a small sample of the conditions and experiences of indigenous women, girls and families across our territories."⁶⁴

In addition to this abuse, Human Rights Watch was told that police failed to protect Aboriginal women and girls. Families and service providers have encountered lack of interest, or dismissal when they report a missing woman or girl. Calls to the police by indigenous women and girls seeking help with violence are "frequently met with skepticism and victim-blaming questions and comments" and victims of abuse are often arrested for actions they have taken to defend themselves.⁶⁵

Overall, Human Rights Watch was struck by "the level of fear on the part of women" and their profound fear of retaliation if they complain or report. Victims of police violence and neglect "lack...faith...in the safety and effectiveness of current complaint processes...[This]leaves victims of egregious abuse without a place to turn."⁶⁶

• ***The Response***

The Human Rights Watch brought unprecedented publicity to the issue of violence against Aboriginal women and girls, and the role of the RCMP, and resulted in renewed calls from Opposition Members in Parliament for a national public inquiry.

Regrettably, the official response has been to demand that Aboriginal women and girls tell their stories to the police, despite the fact that the police are the perpetrators of the violence, and guarantees of confidentiality were necessary in order for Aboriginal women and girls to feel safe enough to talk to Human Rights Watch researchers.

In Parliament, Prime Minister Stephen Harper, responded to Opposition Members calling for an independent public national inquiry by stating:

⁶⁴ CBC News, "RCMP accused of rape in report on B.C. aboriginal women," February 12, 2013, available at <http://www.cbc.ca/news/canada/british-columbia/story/2013/02/12/bc-human-rights-watch-abuse-report.html>

⁶⁵ *Those Who Take Us Away* at 68.

⁶⁶ *Those Who Take us Away* at 60.

If Human Rights Watch, the Liberal party, or anyone else is aware of serious allegations involving criminal activity, they should give that information to the appropriate police so they can investigate it. Just get on and do it.⁶⁷

This is an unrealistic and inappropriate response to the circumstances and fears of the affected Aboriginal women and girls. Human Rights Watch explained:

Prime Minister Stephen Harper...ignores the lack of meaningful accountability for police misconduct and fear of police retaliation that prevents indigenous women and girls from reporting mistreatment...⁶⁸

The Prime Minister also referred the matter to the Commission for Public Complaints Against the RCMP (CPC). Richard Evans, senior director of operations stated on February 19 that the CPC is treating the Human Rights Watch report as a complaint and preparing to launch a public-interest investigation⁶⁹ into some issues, such as strip searches of women and girls by male officers, and poor handling of domestic violence cases when Aboriginal women are involved.

However, the CPC is widely seen as lacking independence and credibility.⁷⁰ Although it is said to provide civilian oversight, in fact,

⁶⁷ House of Commons Debates, Volume 146, No. 210, 1st session, 41st Parliament, February 13, 2013 at 7 – 8, available at <http://www.parl.gc.ca/content/hoc/House/411/Debates/210/HAN210-E.PDF> The response of the RCMP was similar. The RCMP said that the allegations were serious, but "...none of these allegations have been brought forward for investigation. It is impossible to deal with such public and serious complaints when we have no method to determine who the victims or the accused are." See: "RCMP Responds to Human Right Watch Report," February 13, 2013, available at <http://www.rcmp-grc.gc.ca/news-nouvelles/speeches-stat-discours-decl/2013/20130213-eng.htm>

⁶⁸ Human Rights Watch, "Canada: Harper's Comments Ignore Victims' Fear of Reprisal", February 14, 2013, available at <http://www.hrw.org/news/2013/02/14/canada-harper-s-comments-ignore-victims-fear-reprisal>

⁶⁹ The Globe and Mail, "Watchdog set to investigate rights report's allegations of RCMP abuse", February 19, 2013, available at <http://www.theglobeandmail.com/news/politics/watchdog-set-to-investigate-rights-reports-allegations-of-rcmp-abuse/article8873709/%29>.

⁷⁰ The CPC initiated a public interest complaint regarding harassment in the RCMP, and issued a report in February 2013 in which the Commission found that only 4% of 718 internal complaints made by members of the force between 2005 and 2011 alleged sexual harassment. On the basis of this, the CPC concluded that: "the empirical data...does not substantiate the supposition that the RCMP is experiencing a systemic problem with gender-based or sexual workplace harassment." The

most of its investigations into complaints against the RCMP are carried out by the RCMP themselves. Clearly, a CPC public interest investigation is not a substitute for a national public inquiry.

The calls by the Prime Minister of Canada and the RCMP for Aboriginal women and girls who have been mistreated by the police to just come forward with their complaints has encouraged journalists and others to infer that the allegations of assault and abuse must not be true if the women and girls will not talk.⁷¹

Following the release of the Human Rights Watch report, the RCMP questioned NWAC's reported numbers of disappearances and murders,⁷² three years after Sisters in Spirit issued its reports.

Commission did not look behind the complaint forms; it did no interviews with members of the force, and did not take into account the documented fear of retaliation which deters female members from making complaints. CPC, *Public Interest Investigation Into RCMP Workplace Harassment*, February 2013, at 35, available at <http://www.cpc-cpp.gc.ca/cnt/decision/pii-eip/wHarass-harceT/rep-rap-eng.pdf>

⁷¹ These inferences feed into, and are related to, an extreme racist backlash which has arisen in Canada in response to the recent activism of Aboriginal peoples, including the increasingly high profile given to the issue of violence against Aboriginal women and girls. The backlash has taken the form of a rape of a woman in Thunder Bay, which is being investigated as a hate crime because the two men involved made racist remarks and threats in the course of raping, strangling and beating the woman. Other women in Thunder Bay are now afraid to walk alone. See, for example, CBC News, "Police investigate possible hate crime: First Nations woman allegedly sexually assaulted in Thunder Bay", December 31, 2012, available at <http://www.cbc.ca/news/canada/thunder-bay/story/2012/12/31/tb-police-investigate-sexual-assault.html>; see also, CBC News, "Living in Fear", February 20, 2013, available at <http://www.cbc.ca/player/News/TV+Shows/The+National/ID/2337243787/>. In addition, this backlash has taken the form of racist and derogatory commentary in mainstream and other news media, and the perpetuation of untruths about the history of indigenous peoples in Canada. Because of this, a number of First Nations made an urgent action request to the Committee on the Elimination of Racial Discrimination, during its 82nd session, February 11 to March 13, 2013, requesting the Committee to investigate, make recommendations for action by Canada to take "positive action as allowable in a democratic society to curtail the spread of ...negative stereotypes", See *Submission to the 82nd session of the Committee on the Elimination of Racial Discrimination by Ermineskin First Nation, et al*, available at <http://www.scribd.com/doc/127894556/Feb-2013-UN-CERD-Submission-Racism-and-Media>

⁷² CBC News, "RCMP questions claim of 600 missing aboriginal women". February 16, 2013, available at <http://www.cbc.ca/news/canada/story/2013/02/16/rcmp-aboriginal-women.html>. See also, John Ivison, The National Post, "Conflicting numbers on missing aboriginal women another reason an inquiry is needed", February 19, 2013, available at <http://fullcomment.nationalpost.com/2013/02/19/john-ivison-conflicting-numbers->

NWAC's figures were derived from secondary sources, in many instances directly from police reports that were confirmed by NWAC researchers with various police agencies. In addition to mining public sources of information and verifying files, however, NWAC researchers spoke directly with many families of missing and murdered Aboriginal women and girls. In this way, NWAC was able to augment the data and identify the needs and gaps in terms of service delivery, programming, and policy services. The RCMP is fully aware of this.

The protocol governing the use of the database restricts NWAC to publicizing aggregated data, except where a family member has agreed to the story of their mother or daughter being included in NWAC's reports and on our website. NWAC will not publicize information about the individual women or girls whose murders or disappearances are in the database because this could have repercussions for living family members and for communities, which NWAC cannot predict or control.

It is unfortunate in our view that the RCMP has questioned numbers which, NWAC is sure, represent an undercount and when Statistics Canada's Homicide Survey and police databases still do not provide reliable data on murders and disappearances of Aboriginal women and girls.

When Commissioner Paulson was appointed to lead the RCMP in November 2011, he admitted that there were deeply rooted problems in the force, including "a culture of bullying and a legacy of botched investigations." The Globe and Mail reported that: "Commissioner Paulson stated flatly that too many Mounties today believe that their authority entitles them to misuse power. He said his 30,000 employees need to better understand accountability and leadership – or the Mounties may be 'one or two more earth-shattering heartbreaks' away from losing all credibility."⁷³

However, Commissioner Paulson appears to have changed his approach. His most recent response to the Human Rights Watch report is contained in an email he sent on February 18, 2013 to the 29,000

[on-missing-aboriginal-women-another-reason-an-inquiry-is-needed/](#); Big M Musings, "Heart of Darkness: The RCMP, our Stolen Sisters and morality of statistics", February 19, 2013, available at <http://bigmmusings.wordpress.com/2013/02/19/heart-of-darkness-the-rcmp-our-stolen-sisters-and-the-morality-of-statistics/>

⁷³ Colin Freeze, The Globe and Mail, "Top Mountie delivers candid, scathing view of force at the brink", December 19, 2011, available at <http://www.theglobeandmail.com/news/politics/top-mountie-delivers-candid-scathing-view-of-force-at-the-brink/article4181575/>

members of the RCMP. In this email, Commissioner Paulson, noting that there have been recent reports regarding sexual harassment and criminal violence by members of the force, said: "My message to you today is – don't worry about it, I've got your back."⁷⁴

4. National Public Inquiry

The call for a national public inquiry has become widespread and urgent. NWAC, FAFIA, the Assembly of First Nations, many other Aboriginal organizations, the Opposition Parties in the Parliament of Canada, women's organizations, and many social justice NGOs, have become convinced that there must be a national public inquiry into police and government failures with respect to the hundreds of murders and disappearances of Aboriginal women and girls.⁷⁵ Most recently, the call for a national public inquiry has been joined by the Canadian Association of Statutory Human Rights Agencies, whose members are Canada's national human rights institutions — human rights commissions in Newfoundland and Labrador, Prince Edward Island, New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, the Northwest Territories, Yukon and Nunavut, and at the federal level — whose statutory mandate is to promote equality and non-discrimination.⁷⁶

Canada has a tradition of appointing public commissions of inquiry when there is an issue of governmental or public institution failure, precisely in order to ensure that there is a transparent and independent hearing of the evidence, the causes of the failure, and an open public determination of the best ways to prevent recurrence. Public commissions of inquiry are appointed in order to secure the confidence of the public and affected parties.

⁷⁴ The full text of this email can be found in David Akin's blog, ON THE HILL, February 18, 2013 available at: <http://blogs.canoe.ca/davidakin/main-page/paulson-to-mounties-keep-up-the-good-work/>

⁷⁵ See, for example, the resolution of the Assembly of First Nations, passed in July 2012, available at http://www.afn.ca/uploads/files/missing_and_murdered_indigenous_women/01-2012_missing_and_murdered_indigenous_women_and_girls_in_canada_2012.pdf.

⁷⁶ Canadian Association of Statutory Human Rights Agencies (CASHRA) was established in 1972 as an umbrella organization for the federal, provincial and territorial human rights commissions. See website <http://www.cashra.ca/about.html>. A copy of the CASHRA resolution is appended.

In light of the long-standing distrust between Aboriginal peoples and Canadian governments and public institutions, which is the legacy of colonization, and of continuing neglect and mistreatment of Aboriginal peoples, a national public inquiry is the best mechanism for addressing and resolving the tragedy of murders and disappearances of Aboriginal women and girls in Canada.

A Commission of Inquiry would be appointed by the Government of Canada, and its terms of reference would also be set by government. However, a public commission of inquiry is understood to be independent, to operate at arms' length from government, determine its own procedures, hire its own staff, and control its own research. No other mechanism, such as a task force, or a parliamentary committee, affords the same transparency and independence from the political process.

It is essential that appointments, terms of reference, and resources for an inquiry into murders and disappearances of Aboriginal women and girls be established in consultation with Aboriginal women and their organizations.⁷⁷ Were Canada to consult with Aboriginal women and their organizations about its design, a national public inquiry could effectively address the many dimensions of the endemic violence against Aboriginal women and girls in Canada, and lead to improvements in the relations between the Crown and Aboriginal peoples, and to changes in the lives and conditions and safety of Aboriginal women and girls.

5. All Party Special Committee

Despite the many urgent calls for a national public inquiry, the Government of Canada refuses to establish one. They have not explained their reasons for this refusal, except to say repeatedly that what they are doing is enough.⁷⁸ In an effort to keep the issue alive,

⁷⁷ Much has been learned from the failings of the one inquiry into murders and disappearances of women which Canada has established so far, the Missing Women Commission of Inquiry in British Columbia. The lessons learned about procedure and approach have been delineated in a report by the B.C. Civil Liberties Association, PIVOT Legal Society, and West Coast Women's Legal Education and Action Fund, entitled *Blueprint for an Inquiry: Learning from the Failures of the Missing Women Commission of Inquiry*, November 2012, available at <http://bccla.org/wp-content/uploads/2012/11/20121119-Report-Missing-Women-Inquiry.pdf>

⁷⁸ See Michael Woods, Postmedia News, "Why the federal government hasn't called a national inquiry into missing aboriginal women", February 19, 2013, available at

the Liberal Party Aboriginal Affairs critic, Carolyn Bennett, moved a motion to strike an all-party Special Committee. The text of the resolution reads as follows:

That the House recognize that a disproportionate number of Indigenous women and girls have suffered violence, gone missing, or been murdered over the past three decades; that the government has a responsibility to provide justice for the victims, healing for the families, and to work with partners to put an end to the violence; and that a special committee be appointed, with the mandate to conduct hearings on the critical matter of missing and murdered Indigenous women and girls in Canada, and to propose solutions to address the root causes of violence against Indigenous women across the country; ...⁷⁹

This motion was supported by the New Democratic Party and the governing Conservative Party and passed unanimously on February 27, 2013.

This is a political committee, on which the Members of Parliament who belong to the governing Conservative party have a majority, and can control the witness list, resources, procedure and final recommendations. This is not a substitute for a national public inquiry. However, the current government will not agree to a public inquiry. This Parliamentary Committee may be a step and may keep the issue alive in the minds of Canadians and politicians.

6. Intervention by the Inter—American Commission on Human Rights

There is a clear need for, and widespread interest in, intervention by international and regional human rights bodies. This outside assistance and scrutiny is viewed by NWAC, FAFIA, the Assembly of First Nations, and many social justice groups as essential to making progress on this issue, because of the independence of these bodies and because of their broad human rights expertise.

<http://www.canada.com/federal+government+hasn+called+national+inquiry+into+missing+aboriginal+women/7986672/story.html#ixzz2LTF0ofLz>

⁷⁹ The speech of the Honourable Carolyn Bennett moving the motion in the House of Commons and the Hansard record of the debate on the motion can be found at: <http://carolynbennett.liberal.ca/blog/opposition-day-motion-missing-murdered-aboriginal-women-girls/>

The Inter-American Commission on Human Rights has been helpful both to women in Mexico and to Mexican national, state and local governments in their efforts to address the murders and disappearances in Juarez. We wish Aboriginal women and girls to have, and we wish Canada to have, the benefit of your expertise and assistance at this crucial moment, in order to develop methods for protecting the equal rights of Aboriginal women and girls, and for living up to the obligations to provide equality and equal protection of the law.

Recommendations

We request the Commission to urge Canada to:

- Initiate a national inquiry: Canada should initiate an inquiry into the disappearances and murders of Aboriginal women and girls throughout the country that will lead to the design of national, cross-jurisdictional mechanisms and protocols for police and justice officials. This national inquiry should include a review of practices and measures related to child welfare, social assistance, housing, criminal justice, policing, and incarceration and identify where systemic correction is needed to dismantle institutionalized sexism and racism, and to address systemic social and economic disadvantage.
- Immediately develop a strong action plan: Canada should develop a national action plan to address the crisis of violence against Aboriginal women and girls, in partnership with NWAC and other Aboriginal and women's organizations.
- Design and implement appropriate policies to ensure inter-jurisdictional and inter-agency coordination of policing and law enforcement, with a view to preventing disappearances and violence against Aboriginal women and girls and producing improved responses.
- Co-operate with relevant civil society groups: Canada should cooperate with civil society groups endeavoring to end violence against Aboriginal women and girls in Canada and ensure that Aboriginal women's organizations, Aboriginal organizations, and

communities have stable and adequate funding so that they can participate fully and take the lead in the development of policies that affect them.

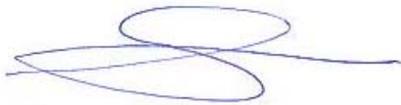
- Ensure full and robust participation within a national inquiry: Canada should ensure that individuals and groups, particularly Aboriginal women, are granted standing and receive public funding in order to guarantee full and robust participation in a national inquiry and any other related commissions or inquiries or committee processes that may arise. Participants should also be ensured the right to choose their own representatives within the inquiry.
- Ensure that Aboriginal women and girls have access to legal aid and other funding: Canada should ensure that Aboriginal women and girls have access to legal aid and other funding so that they are free to exercise their right to choose their own representatives so as to participate fully and adequately in any legal or administrative process in which their rights are being determined or affected.
- Develop and implement a strategy to address social and economic disadvantage: Canada should immediately develop and implement a strategy to address the disadvantaged social and economic conditions of Aboriginal women and girls, including poverty, inadequate housing, low educational attainment, inadequate child welfare policies, and over-criminalization.
- Improve federal, provincial, and territorial police accountability mechanisms: Canada should improve accountability mechanisms for both federal and provincial police forces that include both civilian oversight and civilian investigation, particularly for adherence with constitutional requirements of equal protection of the law.

The Petitioners request the Inter-American Commission on Human Rights to conduct a site visit to Canada to examine and document the situation of murders, disappearances, and massive levels of violence against Aboriginal women and girls, and to provide expertise and assistance. The Petitioners further request that the Inter-American Commission on Human Rights issue a press release regarding its views on this matter.

Respectfully submitted,



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****FINAL****

CASHRA MOTION ON MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS

Preamble: The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides an important legal framework in the promotion of Indigenous rights in Canada and globally. On the domestic front, a number of important developments have signaled an openness for constructive change, notably: the official apology in 2008 from the Government of Canada to survivors of residential schools; the work of the Truth and Reconciliation Commission, which stemmed from the settlement agreement of a court case launched by survivors; and the full repeal of section 67 of the *Canadian Human Rights Act* in 2011, which opened the *Indian Act* to human rights scrutiny for the first time.

Yet Aboriginal women and girls continue to experience systemic discrimination and they bear a persistent and disproportionate burden of violence. According to Statistics Canada, Aboriginal women are seven times more likely to be murdered than non-Aboriginal women in Canada.

The Native Women's Association of Canada reports that over the past 30 years, an alarming number of Aboriginal women and girls have gone missing or have been found murdered in communities across Canada. Most of these cases remain unresolved.

These chilling facts highlight the need for urgent action to address the root causes of violence against Aboriginal women and girls. There is also an important need for closure for the people who have lost their loved ones to this needless violence.

Motion: That CASHRA urge the Government of Canada to work together in partnership with Aboriginal peoples' organizations to: (1) develop and implement a national action plan that will focus urgent attention on addressing and preventing the root causes of violence against Aboriginal women and girls, including poverty and systemic discrimination; and (2) noting that Canada has proposed a Parliamentary Committee, CASHRA still urges the establishment of an independent and inclusive inquiry into missing and murdered Aboriginal women and girls in Canada.