



# Missing and Murdered Indigenous Women in British Columbia, Canada





Organization of  
American States

**IACHR** Inter-American  
Commission on  
Human Rights

## **INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

OEA/Ser.L/V/II.

Doc. 30/14

21 December 2014

Original: English

# **Missing and Murdered Indigenous Women in British Columbia, Canada**

2014

[www.cidh.org](http://www.cidh.org)

**OAS CATALOGING-IN-PUBLICATION DATA**

Inter-American Commission on Human Rights.

Missing and murdered indigenous women in British Columbia, Canada.

p. ; cm. (OAS. Official records ; OEA/Ser.L/V/II)

ISBN 978-0-8270-6324-2

1. Indian women—Crimes against—Canada.
2. Indian women—Violence against—Canada.

I. Title. II. Series.

OEA/Ser.L/V/II. Doc.30/14

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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. This report addresses the situation of missing and murdered indigenous women in British Columbia, Canada. It analyzes the context in which indigenous women have gone missing and been murdered over the past several years and the response to this human rights issue by the Canadian State. The report offers recommendations geared towards assisting the State in strengthening its efforts to protect and guarantee indigenous women's rights.
2. Indigenous women and girls in Canada have been murdered or have gone missing at a rate four times higher than the rate of representation of indigenous women in the Canadian population which is 4.3%. The most comprehensive numbers available were collected by the non-profit organization Native Women's Association of Canada (NWAC) through an initiative financed by the governmental entity Status of Women Canada. As of March 31, 2010, NWAC has gathered information regarding 582 cases of missing or murdered indigenous women and girls across the country from the past 30 years. Civil society organizations have long claimed that the number could be much higher, and new research indicates that over 1000 indigenous women could be missing or dead across Canada. Although high numbers of missing and murdered indigenous women in Canada have been identified at both the national and international levels, there are no trustworthy statistics that could assist in reaching a fuller understanding of this problem. The Government itself recognizes that Canada's official statistics do not provide accurate information regarding the true numbers of missing and murdered indigenous women. In addition, there is no reliable source of disaggregated data on violence against indigenous women and girls because police across Canada do not consistently report or record whether or not the victims of violent crime are indigenous.
3. As the report explains, the numbers of missing and murdered indigenous women are particularly concerning when considered in light of the fact that indigenous people represent a small percentage of the total population of Canada. Although the information received by the Commission indicates that this could be a nationwide phenomenon, this report is focused on the situation in British Columbia, because the number of missing and murdered indigenous women is higher there in absolute terms than any other province or territory in Canada.
4. British Columbia accounts for 160 cases, 28% of NWAC's total database of 582 and is followed by Alberta with 93 cases, 16% of the total. The high numbers of missing and murdered indigenous women in British Columbia are concentrated in two different areas of the province: Prince George, in the northern part of the province; and the Downtown East Side, an area of downtown Vancouver, the largest city and metropolitan area in the province.
5. The disappearances and murders of indigenous women in Canada are part of a broader pattern of violence and discrimination against indigenous women in the country. Various official and civil society reports demonstrate that indigenous women are victims of higher rates of violence committed by strangers and acquaintances than non-indigenous women. During the IACHR visit the Canadian government indicated that indigenous women are significantly over-represented as victims of homicide and are also three times more likely to be victims of violence than non-indigenous women. Also, indigenous women suffer more frequently from more severe forms of domestic violence than non-indigenous women.

6. According to the information received, the police have failed to adequately prevent and protect indigenous women and girls from killings and disappearances, extreme forms of violence, and have failed to diligently and promptly investigate these acts. Family members of missing and murdered indigenous women have described dismissive attitudes from police officers working on their cases, a lack of adequate resources allocated to those cases, and a lengthy failure to investigate and recognize a pattern of violence. Also, the existence of multiple policing jurisdictions in British Columbia resulted in confusion between the Royal Canadian Mounted Police and the Vancouver Police Department regarding responsibility for investigation. This situation in turn has perpetuated the violence; as the failure to ensure that there are consequences for these crimes has given rise to both real and perceived impunity. The kinds of irregularities and deficiencies that have been denounced and documented include: poor report taking and follow up on reports of missing women; inadequate proactive strategies to prevent further harm to women in the Downtown Eastside; failure to consider and properly pursue all investigative strategies; failure to address cross-jurisdictional issues; ineffective coordination between police; and insensitive treatment of families.
7. Canadian authorities and civil society organizations largely agree on the root causes of these high levels of violence against indigenous women and the existing vulnerabilities that make indigenous women more susceptible to violence. These root causes are related to a history of discrimination beginning with colonization and continuing through inadequate and unjust laws and policies such as the Indian Act and forced enrolment in residential schools that continue to affect them. In this regard, the collection of laws determining Aboriginal status established in the Indian Act restricted the freedom of women who identified themselves as indigenous to be recognized as such. Additionally, the residential schools program separated indigenous children from their families, communities, and cultural heritage.
8. As a consequence of this historical discrimination, the IACHR understands that indigenous women and girls constitute one of the most disadvantaged groups in Canada. Poverty, inadequate housing, economic and social relegation, among other factors, contribute to their increased vulnerability to violence. In addition, prevalent attitudes of discrimination – mainly relating to gender and race – and the longstanding stereotypes to which they have been subjected, exacerbate their vulnerability.
9. The OAS Charter and the American Declaration of the Rights and Duties of Man constitute sources of legal obligation for OAS Member states including Canada. The organs of the international and regional human rights systems for the protection of human rights have developed jurisprudence that recognizes the rights of indigenous peoples as well as the obligation to guarantee women’s rights, both of which encompass rights to equality, non-discrimination and non- violence. In this regard, international and regional human rights systems have developed a set of principles when applying the due diligence standards in cases of violence against women, as well as particular standards in relation to missing women.
10. International and regional systems have also emphasized that a State’s failure to act with due diligence with respect to cases of violence against women is a form of discrimination. The lack of due diligence in cases of violence against indigenous women is especially grave as it affects not only the victims, but also their families and the communities to which they belong. In addition, given the strong connection between the greater risks for violence that indigenous women confront and the social and economic inequalities they face, when applying the due diligence standard, States must implement specific measures to address the social and economic disparities that affect them.

11. The IACHR stresses that addressing violence against indigenous women is not sufficient unless the underlying factors of racial and gender discrimination that originate and exacerbate the violence are also comprehensively addressed. A comprehensive holistic approach applied to violence against indigenous women means addressing the past and present institutional and structural inequalities confronted by these women. Elements that must be addressed include the dispossession of their land, as well as historical laws and policies that have negatively affected indigenous women, put them in an unequal situation, and prevented their full enjoyment of civil, political, economic, social and cultural rights.
12. The IACHR acknowledges the State's efforts to address the situation of missing and murdered indigenous women in British Columbia. The findings in the Missing Women's Commission of Inquiry report regarding the irregularities in the handling of the investigations can serve as a starting point for reforms to the investigative function. This could help prevent irregularities in investigations of future disappearances or murders of indigenous women. With respect to the past cases examined in this report, in accordance with international human rights standards, the Canadian State is obliged to continue the investigation of unsolved cases of missing indigenous women. In this regard, the Commission has become aware of many cases in which investigations have remained pending, or the authorities have decided not to proceed with prosecution. The IACHR stresses the importance of the right of families and relatives to know what happened to their loved ones. The authorities cannot justify the failure to complete an investigation or prosecution on insufficient proof if the reason for the insufficiency is deficiencies or irregularities in the investigation.
13. In addition, the IACHR notes that the State must provide a national coordinated response to address the social and economic factors that prevent indigenous women from enjoying their social, economic, cultural, civil and political rights, the violation of which constitutes a root cause of their exposure to higher risks of violence.
14. The IACHR also identifies serious challenges remaining in the process of coordination and implementation of the State's policies, services and overall initiatives identified in the present report. The IACHR observes that the State must improve its consultation mechanisms with the different parties involved, especially including indigenous women, indigenous women's groups, civil society organizations and families and relatives of missing and murdered indigenous women, in order for those mechanisms to be successful.
15. Based on its close analysis of the situation of missing and murdered indigenous women in British Columbia, in the present report the Commission issues a series of recommendations to the State of Canada. The IACHR notes the willingness and openness of the Canadian State, at both the federal and provincial levels, to discuss the situation, its causes, and how it can be further addressed. The IACHR also recognizes the steps already taken by the Canadian State, at both the federal and provincial levels, to address some of the particular problems and challenges that indigenous women and girls in Canada, and British Columbia specifically, must confront, a number of which have been identified in this report. In light of the State's commitment to improve the rights and circumstances of indigenous women, the IACHR hopes that the conclusions and recommendations offered in this report will assist it in putting its commitment into practice.



CHAPTER 1  
**INTRODUCTION**





# INTRODUCTION

## A. Overview of the issues to be addressed

1. This report addresses the situation of missing and murdered indigenous women in British Columbia, Canada. It analyzes the context in which indigenous women have gone missing and been murdered over the past several years and the response to this human rights issue by the Canadian State (“State” or “Canadian State” or “Canada”). The report offers recommendations geared towards assisting the State in strengthening its efforts to protect and guarantee indigenous women’s rights. In its observations on this report, the Canadian State recognized the work of the IACHR in preparing this report and indicated that this situation continues to be of concern for all levels of government in Canada, for Aboriginal organizations and communities and for Canadian citizens at large.<sup>1</sup> Additionally, the Government stated: “Canada has been clear that abhorrent acts of violence will not be tolerated in our society, and remains committed to take action to address the situation of missing and murdered Aboriginal women and girls in Canada.”<sup>2</sup>
2. This report and the working visit that preceded it were prompted by information received by the Inter-American Commission on Human Rights (“IACHR” or “Commission”) regarding the situation of violence against indigenous women and girls in Canada. Indigenous women and girls in Canada have been murdered or have gone missing at a rate four times higher than the representation of indigenous women in the Canadian population which is 4.3%. The information received by the Commission indicates that this could be a nationwide phenomenon. However, this report is focused on the situation in British Columbia, because the number of missing and murdered indigenous women is higher in absolute terms than any other province or territory in Canada.
3. On March 28, 2012, the IACHR held a hearing on “The Situation of Aboriginal Women and Girls in Canada” at the request of the Native Women’s Association of Canada (“NWAC”), the Canadian Feminist Alliance for International Action (“FAFIA”), and the University of Miami Human Rights Clinic. The hearing focused on the disproportionately high rates of murders and disappearances that have affected indigenous women, along with allegations that police failures and systemic discrimination have obstructed access to justice for the victims’ families and adequate protection for indigenous women. According to the information available, British Columbia has approximately 160 documented cases of missing or murdered indigenous women, the greatest number of any province<sup>3</sup>. This figure does not include the potentially large number of cases that have not been documented, due to the marginalization and fear of the victims and deficiencies in the investigation. The majority of these cases involve young

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<sup>1</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>2</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>3</sup> NWAC, Fact Sheet: *Missing and Murdered Aboriginal Women and Girls in British Columbia*. Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_BC.pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf)

women under the age of 30 and, of those for whom information regarding children is known, 88% were mothers. In cases where charges have been laid, 49% of the women were killed by strangers or by acquaintances, as opposed to family members, a significantly higher rate than the rest of the population. This indicates that indigenous women and girls may be at greater risk for victimization by sexual predators, serial killers, and other criminals.

4. Following the hearing, by letter dated April 26 2012, the IACHR requested information from the Canadian State under Article 18 of the IACHR's Statute.<sup>4</sup> The Government of Canada responded to the Commission's request for information on July 23, 2012, providing details on its programs and policies regarding indigenous women. In a letter issued August 14, 2012, the Commission requested a working visit to Canada. The purpose of this working visit would be to examine the situation of missing and murdered indigenous women and girls in British Columbia along with the State's efforts to address this human rights issue.
5. On March 12, 2013, a second hearing was held to follow up on the "Situation of the Right to Life of Indigenous Women and Girls in Canada."<sup>5</sup> During the hearing the IACHR reiterated its request to visit the country. On July 17, 2013, the Government of Canada formally invited a delegation from the IACHR to visit Canada and assess this situation.
6. The Commission conducted this working visit between August 6 and August 9, 2013. The visit was led jointly by Commissioner Tracy Robinson, Vice President of the IACHR and Rapporteur on the Rights of Women, and Commissioner Dinah Shelton, Rapporteur on the Rights of Indigenous Peoples. The Commissioners were accompanied by two members of the IACHR Secretariat.
7. The visit was initiated in Ottawa, the national capital, on August 6, and continued with meetings in British Columbia, specifically in Prince George and in Vancouver and the surrounding lower mainland, and concluded on August 9, 2013. In Ottawa the Rapporteurs met with federal officials including: the Hon. Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development Canada ("AANDC"); Jason Mac Donald, Deputy Chief of Staff and Josee Touchette, Senior Assistant Deputy Minister ("SADM") for Policy and Strategic Direction, (AANDC); Colleen Swords, Associate Deputy Minister, AANDC; François Ducros, Assistant Deputy Minister ("ADM"), Education & Social Development Programs and Partnerships, AANDC; Andrew Saranchuk, ADM, Reconciliation and Individual Affairs, AANDC; Dan Gaspé, Director, Aboriginal Housing, Canadian Mortgage & Housing Corporation; Doug Murphy, Senior Director, Social Policy Directorate, Income Security Division, Strategic Policy and Research Branch, Human Resources and Social Development Canada; Gail Ksonzyna, Senior Director, Aboriginal Affairs Directorate, Skills and Employment Branch, Human Resources and Social Development Canada; Kathy Aucoin, Chief, Integration, Analysis and Research, Canadian Centre for Justice Statistics, Statistics Canada; Linda Savoie, Director General, Women's Program, Status of Women Canada ("SWC"); Debra Gillis, Acting Director General, Interprofessional Advisory and Program Support, Health Canada; Patrick Boucher, A/ADM for Strategic Policy, Public Safety Canada; Glen Linder, Director of International Affairs, Public Safety Canada; Angela Connidis, A/ADM for Community Safety and Partnerships, Public Safety

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<sup>4</sup> Article 18 of the IACHR entrusts the Inter-American Commission with the principal function of promoting the awareness and defense of human rights. The same Article establishes that the Commission may request information from the government of Member States with respect to measures they have adopted that may impact human rights.

<sup>5</sup> IACHR, 147<sup>th</sup> Period of Sessions, *Situation of the Right to Life of Indigenous Women and Girls in Canada*, March 12, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>.

Canada; Janice Armstrong, Acting Deputy Commissioner, Contract and Aboriginal Policing, Royal Canadian Mounted Police (“RCMP”); Superintendent Tyler Bates, Director of National Aboriginal Policing and Crime Prevention Services, RCMP; Jodie van Dieen, A/ADM, Public Law Sector, Department of Justice; (“DOJ”), Barbara Merriam, A/Senior ADM, Policy Sector, DOJ; Ntunga Masozera, Innovations, Analysis and Integration Directorate, DOJ; Stephanie Dulude, Policy Implementation Directorate, DOJ; Karolyn Lui, Aboriginal Justice Directorate, DOJ; Perla Bejjani, Human Rights Law Section, DOJ.

8. In Ottawa, the Rapporteurs also met with: Jean Crowder and Susan Truppe, Special House Committee on Violence Against Indigenous Women; Michael Smith, Senior Policy Analyst, National Aboriginal Initiative; Harvey Goldberg, A/Director General, Commission’s Knowledge Centre, Canadian Human Rights Commission; Ian Phail, Interim Chair, and Richard Evans, Senior Director, Commission for Public Complaints against the RCMP (“CPC”); Sue O’Sullivan, Federal Ombudsman for Victims of Crime, and Christina MacDonald, Manager, Communications, Office of the Federal Ombudsman for Victims of Crime; and Valerie Oles, Manager of Complaints Review, Office of the Federal Ombudsman for Victims of Crime.
9. In British Columbia the Rapporteurs met with federal and provincial officials including: Suzanne Anton, Attorney General, Minister of Justice; Peter Cunningham, ADM, Clayton Pecknold, ADM and Director of Police Services Division, Policing and Security Branch; Lynda Cavanaugh, ADM, Community Safety and Crime; Sophie Mas, Senior Project Manager, Policing and Security Branch; Vancouver Police Department, Chief Constable Jim Chu<sup>6</sup>; Chief Superintendent Rod Booth, RCMP Prince George Detachment; Staff Sergeant Wayne Clary, RCMP Prince George Detachment; and Superintendent Paul Richards, RCMP Prince George Detachment; Lynda Cavanaugh, Ministry of Justice, ADM, Community Safety and Crime; Taryn Walsh, Ministry of Justice, Executive Director, Victim Services and Crime Prevention; Peter Cunningham, Ministry of Aboriginal Relations and Reconciliation, ADM, Partnerships and Community Renewal; Chief Superintendent Jim Gresham, RCMP, Assistant Commissioner Wayne Rideout; Peter Cunningham, Ministry of Aboriginal Relations and Reconciliation, ADM, Partnerships and Community Renewal Division; Advisory Council on Aboriginal Women (MACAW): Wendy Grant John, Chair, Kim Baird, Paulette Flamond, Mary Teegee, Charlene Belleau and Debbie Williams. In Prince George the Rapporteurs met with MLA for Prince George Mike Morris, Mayor Shari Green and Councillor Albert Koehler.
10. The Rapporteurs also met with Chief Civilian Director Richard Rosenthal and Tansey Ramanzin, BC Independent Investigations Office; Commissioner Wally Oppal, BC Missing Women Commission of Inquiry; and Art Vertlieb, Senior Commission Council, BC Missing Women Commission of Inquiry.
11. The Rapporteurs also met with Grand Chief Edward John, First Nations Summit (“FNS”); Cheryl Casimer, FNS; Robert Phillips, FNS; Stacey Edzerza Foz, FNS.
12. Additionally, in Ottawa and British Columbia the IACHR received information and testimony from victims’ relatives and met with representatives of nongovernmental human rights organizations, indigenous peoples and organizations and other civil society representatives at the national and provincial level, including, among others: Michele Audette, President of the Native Women’s Association of Canada (“NWAC”); Claudette Dumont-Smith, Executive Director, NWAC; Irene Goodwin, NWAC; Jackie Brennan, NWAC; Shelagh Day, Canadian Feminist Alliance

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<sup>6</sup> Chief Constable Jim Chu participated in a teleconference call.

for International Action (“FAFIA”); Sharon McIvor, FAFIA; Gwen Brodsky, counsel to NWAC and FAFIA; Alex Neve, Secretary General, Amnesty International Canada; Craig Benjamin, Amnesty International; Jackie Hansen, Amnesty International; Marie-Even Bordeleau, Quebec Native Women; Karen Campbell, Assembly of First Nations (“AFN”); Johanna Jimenez-Pardo, AFN; Frances Daly, Minwaashin Lodge; Mary Daoust, Minwaashin Lodge; Holly Johnson, FAFIA; Denise Stonefish, Association of Iroquois and Allied Indians, Ontario Representative Of the AFN Women’s Council; Lorraine Netro, AFN Womens’s Council.

13. In Vancouver, the delegation met with Darcie Benett, Pivot Legal Society; Josh Paterson, BC Liberties Association; Micheal Vonn, BC Liberties Association; Jill Chettiar, Sex Workers United Against Violence; Bridget Tolley, Families of Sisters in Spirit; Sandra Laframboise, Dancing to Eagle Spirit Society; Asia Crapska, Justice for Girls; Margot Young, Law UBC, Justice for Girls; Natalie Clark, Social work UBC, Indigenous Girls Groups; Laura Holland, Aboriginal Women’s Action Network; Suzanne Jay, Asian Women Coalition Ending Prostitution; Cherry Smiley, Indigenous Women Against the Sex Industry; Jackie Lynne, Indigenous Women Against the Sex Industry; Lisa Sparrow, Vancouver Rape Relief; Summer-Rain Bentham, Vancouver Rape Relief; Alice Lee, Asian Women Coalition Ending Prostitution; Hilla Kerner, Canadian Association of Sexual Assault Centre; Janine Benedet, counsel to the Women’s Coalition for the Abolition of Prostitution; Keira Smith-Tague, Vancouver Rape Relief, Women’s Shelter; Angela Marie MacDougall, Battered Women’s Support Services; Loreley Williams, Vancouver Aboriginal Community Policing Centre, Aboriginal Front Door, Butterflies in Spirit; Celia Pinette, UBCIC; Cori Kelly, Raincity Housing; Coola Louis, UBCIC; Scarlett Lake, PACE; Marlene Jo-Anne Martin, Young; Ann Livingston, Elsie Jones Sebastian, relatives of missing woman; Brandy Kane, Battered Women’s Support Services; Myrna Cranmer, Atira Women’s Resource; Veronica Butler; Sandra Sagnom; Paulena Smith; Barbara Nelson; Michele Pineault; Danielle Fayant; Isabella Diana Erney.
14. In Prince George, the delegation also met with Chief Fred Sam, Nak’azdi; Chief Archie Patrick, Stallat’en First Nation; Tribal Chief Terry Teegee, Carrier Sekani Family Services; Dom Norris, Prince George Metis Elders, UNBC Jackie Thomas, Saik’uz First Nation; Veronica Thomas, Saik’uz First Nation; Wendy Kellas, Carrier Sekani Family Services; Brenda Wilson, Carrier Sekani Family Services; Mary Teegee, Carrier Sekani Family Services, Highway of Tears Initiative; Maris Erickson, Carrier Sekani Family Services; Soo Yinka Erickson-Michel, Carrier Sekani Family Services, Shuswap National Tribal Council; Theresa John, Native Court workers of BC, Counseling Association of British Columbia; Siam Moody, Aboriginal Coordinator of Northern John Howard Society; Ann Marie Sam, Nak’azdi; Gloria George, First Nations Elders, Native Court workers of BC, First Nations Centre, UNBC, Wet’suwet’en Hereditary Chiefs; Karen Sharp, Carrier Sekani Tribal Council; Vivian Tom, Wet’suwet’en First Nation.
15. The Rapporteurs wish to thank the officials and staff of the Government of Canada for their hospitality during the visit. Canada provided its full assistance and cooperation during the visit, thus permitting the Rapporteurs to carry out an extensive program of activities in the exercise of their mandates. The Rapporteurs also wish to extend their thanks to the representatives of Canadian civil society, especially to NWAC and FAFIA, Carrier Sekani Tribal Council and Amnesty International for providing information and helping the IACHR in the preparation and organization of this visit. Finally, the Rapporteurs wish to thank those directly affected by this situation for their cooperation and the important information supplied during the visit.

## ***B. The IACHR's jurisdiction with respect to Canada***

16. Pursuant to Article 18 of the Statute of the Inter-American Commission on Human Rights, the Commission has the following powers with respect to the Member states of the Organization of American States:
  - a. to develop an awareness of human rights among the peoples of the Americas;
  - b. to make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights;
  - c. to prepare such studies or reports as it considers advisable for the performance of its duties;
  - d. to request that the governments of the states provide it with reports on measures they adopt in matters of human rights;
  - e. to respond to inquiries made by any Member state through the General Secretariat of the Organization on matters related to human rights in the state and, within its possibilities, to provide those states with the advisory services they request;
  - f. to submit an annual report to the General Assembly of the Organization, in which due account shall be taken of the legal regime applicable to those States Parties to the American Convention on Human Rights and of that system applicable to those that are not Parties;
  - g. to conduct on-site observations in a state, with the consent or at the invitation of the government in question; and
  - h. to submit the program-budget of the Commission to the Secretary General, so that he may present it to the General Assembly.
  
17. Regarding OAS Member states that are not party to the American Convention on Human Rights, such as Canada, Article 20 provides that the IACHR has the following powers in addition to those described in the paragraph above:
  - a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;
  - b. to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
  - c. to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.
  
18. Canada has been subject to the jurisdiction of the Commission since it deposited its instrument of ratification of the OAS Charter on January 8, 1990.<sup>7</sup> Since that date the IACHR,

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<sup>7</sup> See, Charter of the Organization of American States, as amended by the Protocol of Buenos Aires (1967), Protocol of Cartagena de Indias (1985), Protocol of Washington (1992), and Protocol of Managua (1993), Arts. 53 (defining the status of the IACHR within the OAS) and 106 (setting forth the IACHR's mandate).

as the principal organ of the OAS charged with protecting and promoting human rights in the Americas, has been monitoring the human rights situation in the country through cases, precautionary measures and thematic and country based approaches.

19. The Commission periodically deems it useful to report the results of its study of a particular country, accompanied by recommendations designed to assist the State in ensuring the fullest enjoyment of protected rights and liberties by all persons subject to its jurisdiction.
20. This report was prepared on the basis of material gathered by the Commission, in particular during the August 2013 working visit to Canada that was made to observe the situation of missing and murdered indigenous women in British Columbia. The report refers to information gathered in preparation for, during, and following that visit. The report also refers to relevant data provided by governmental, intergovernmental and civil society sources collected through the Commission's normal monitoring procedures, as well as media reports.

### **C. Preliminary Considerations**

21. For the purposes of this report, the terminology used by the IACHR regarding "indigenous peoples" is not from Canadian law.

### **D. Context of Indigenous Peoples under Canadian law**

22. In order to understand the situation of missing and murdered indigenous women in British Columbia, it is important to briefly review the historical treatment of indigenous peoples under the law and how a context of past discrimination continues to affect the situation of indigenous women and men. As explained further in this report, this historical discrimination is an important factor in the persistence of unequal treatment and stereotyping. This inequality and stereotyping continues to place indigenous women at an increased risk for multiple forms of violence, and often results in impunity for crimes against indigenous women, which in turn perpetuates the violence.
23. Canada's indigenous peoples are known as the Aboriginal peoples of Canada.<sup>8</sup> This refers to the first inhabitants of Canada, and includes First Nations, the Inuit and the Métis.<sup>9</sup> Section 35 of the Canadian Constitution recognizes and affirms all existing indigenous and treaty rights.<sup>10</sup> It recognizes three groups of indigenous people: Indians, Métis, and Inuit.
24. "First Nation" is a term to describe Aboriginal peoples of Canada who are ethnically neither Métis nor Inuit.<sup>11</sup> Many communities also use the term "First Nation" as part of the name of their community. Inuit refers to specific groups of people generally living in the far north

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<sup>8</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 28.

<sup>9</sup> University of British Columbia, *Indigenous Foundations*. Available at: <http://indigenousfoundations.arts.ubc.ca/home/identity/terminology.html>

<sup>10</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 30.

<sup>11</sup> University of British Columbia, *Indigenous Foundations*. Available at: <http://indigenousfoundations.arts.ubc.ca/home/identity/terminology.html>

who are not considered “Indians” under Canadian law.<sup>12</sup> The term Métis refer to a collective of cultural and ethnic identities that resulted from unions between Aboriginal and European people in what is now Canada.<sup>13</sup>

25. The term “Indian” refers to the legal identity of a First Nations person who is registered under the Indian Act, the federal legislation first passed in 1876 which identifies government obligations towards status Indians and regulates the management of Indian resources. A “status Indian” is one who meets the standards set out in the Indian Act in order to be registered as an Indian. Non-status Indians are those who are not registered under the Indian Act. Treaty Indians are status Indians who are members of a First Nation that signed a treaty with the Crown. A “band” is a group of Indians for whose collective use lands or money have been set apart, or who are declared to be a band for the purposes of the Indian Act.
26. Numerous aspects of the relationship between the Canadian government and indigenous peoples were codified into law in the 19th century, including an explanation of the criteria for determining whether a person qualified for indigenous (“Indian”) status. Historically, indigenous women were particularly vulnerable to having themselves and their children stripped of their indigenous status based on marriage to a non-indigenous person. The Royal Commission on Aboriginal Peoples stated in its 1996 report that “the lingering effects of this early and sustained assault on the ability of Indian women to be recognized as ‘Indian’ and to live in recognized Indian communities continue to be experienced by many Indian women and their children today”.<sup>14</sup>
27. The key piece of legislation on these issues was the Indian Act of 1876. In its report on the Indian Act, the Royal Commission on Aboriginal Peoples found that the Act affected the lives and cultures of indigenous peoples by restricting their rights, intruding in their internal matters, establishing assimilationist policies, and determining their identity:

the legislation intruded massively on the lives and cultures of status Indian people. Though amended repeatedly, the act’s fundamental provisions have scarcely changed. They give the state powers that range from defining how one is born or naturalized into ‘Indian’ status to administering the estate of an Indian person after death. Conceived under the nineteenth century’s assumptions about inferiority and incapacity and an assimilationist approach to the ‘Indian question’, the *Indian Act* produced gross disparities in legal rights. It subjected status Indians to prohibitions and penalties that would have been ruled illegal and unconstitutional if applied to other Canadians.<sup>15</sup>

28. The Indian Act tended toward both paternalistic control and segregation of indigenous peoples on reserve lands, and also toward an eventual goal of assimilation of indigenous

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<sup>12</sup> University of British Columbia, *Indigenous Foundations*. Available at: <http://indigenousfoundations.arts.ubc.ca/home/identity/terminology.html>

<sup>13</sup> University of British Columbia, *Indigenous Foundations*. Available at: <http://indigenousfoundations.arts.ubc.ca/home/identity/terminology.html>

<sup>14</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 9.4. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)

<sup>15</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*. Volume 1, Part 2, Chapter 8.3. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)



peoples in Canada into the dominant culture and society. Under this Act, Indians could not manage their own reserve lands or money; management was carried out by federal agents. The majority of indigenous people could not vote until 1960.<sup>16</sup>

29. At the same time, the Act developed and encouraged the use of “enfranchisement,” whereby indigenous men attaining a certain level of education and possessing certain moral standards, among other criteria, could become non-indigenous Canadian citizens, after a probationary period, and would consequently lose their indigenous status. This was not open to women. Enfranchisement required the indigenous man to renounce his indigenous status, and once the process was complete, he could live off of the reserve. In a 1920 amendment the government went further and empowered itself to enfranchise a man even if he did not wish to be enfranchised. Although this provision was repealed two years later, it was later reintroduced in a slightly modified form in 1933 and remained part of the law until 1951.<sup>17</sup>
30. According to the federal government, currently there are 617 First Nations communities in Canada, representing more than 50 nations or cultural groups and 50 indigenous languages.<sup>18</sup> According to the numbers provided by the State, approximately 1,400,000 people in Canada identify themselves as indigenous, or 4.3 % of the population (as of 2011).<sup>19</sup> Of those, 49.8% are registered Indians, 29.9% are Métis, 15.3% are Non-status Indians and 4.2% are Inuit. Approximately 45% of all registered Indians live on reserve. Seventy-five percent of non-status Indians and seventy-one percent of Métis live in urban areas.<sup>20</sup>
31. In the 2011 Census there were 557 reserves nationwide with fewer than 500 inhabitants each. 53% of those First Nation reserves with fewer than 500 inhabitants are in British Columbia.<sup>21</sup> There are over 196,000 indigenous people living in British Columbia, representing 5% of the population of the province. It includes 129,000 First Nations, over 59,000 Métis, and nearly 800 Inuit.<sup>22</sup>
32. Under the Indian Act indigenous peoples living on reserve fall within the jurisdiction of the federal government and therefore are not bound by provisions of provincial law, while Indians living off reserve, Métis, and other indigenous people are governed by the provincial and territorial governments. The federal government is responsible for services on reserve

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<sup>16</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 9. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)

<sup>17</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 9.3. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)

<sup>18</sup> United Nations, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, *The Situation of indigenous peoples in Canada*, A/HRC/27/52/Add.2, 7 May 2014, para. 2; Government of Canada, Aboriginal Affairs and Northern Development Canada, *Aboriginal Demographics, Highlights from the 2011 National Household Survey*. Information provided by the Canadian State during the visit to Canada. According to the Assembly of First Nations, there are 634 First Nations in Canada. See, Resolution No. 47/2000, Confederation of Nations, December 13 -14 2000.

<sup>19</sup> Government of Canada, *Aboriginal Affairs and Northern Development Canada, Aboriginal Demographics, Highlights from the 2011 National Household Survey*. Information provided by the Canadian State during the visit to Canada.

<sup>20</sup> Government of Canada, *Aboriginal Affairs and Northern Development Canada, Aboriginal Demographics, Highlights from the 2011 National Household Survey*. Information provided by the Canadian State during the visit to Canada.

<sup>21</sup> Government of Canada, *Aboriginal Affairs and Northern Development Canada, Aboriginal Demographics, Highlights from the 2011 National Household Survey*. Information provided by the Canadian State during the visit to Canada.

<sup>22</sup> Government of British Columbia, Ministry of Aboriginal Relations and Reconciliation. Available at: <http://www.gov.bc.ca/arr/social/default.html>

and the provincial government is responsible for services off reserve. This division of responsibility has a negative impact on both the quality and quantity of services aimed at the specific needs of indigenous populations living outside their communities. Amnesty International has pointed out that “[w]hile indigenous people living off-reserve have access to programs and services designed for the general population, these programs and services are not necessarily aligned to the specific needs of Indigenous peoples, or delivered in a culturally appropriate way.”<sup>23</sup>

33. According to official statistics, in British Columbia an increasing number of indigenous people (First Nation, Métis and Inuit) are living, studying, and working in urban areas. Currently more than 128,000 indigenous people (representing 60 per cent of British Columbia’s indigenous population) live in urban communities.<sup>24</sup> The distinction between living on and off reserve has a significant impact on indigenous people, since different authorities are responsible for providing essential services. For example, the Federal Government provides for health and social services on reserve, and the Provincial and Territorial Government provide these services off reserve. There are also legal exemptions and regulations that apply specifically to reserves.
34. The following section describes the situation of violence against indigenous women and girls in British Columbia. In understanding the particular conditions in which the victims’ rights were violated, it is important to keep in mind this context of historical discrimination. The IACHR provides a brief overview of the situation of indigenous peoples in Canada in section IV of the Report.

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<sup>23</sup> Amnesty International, Report: *Canada, Stolen Sisters, A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, AMR 20/003/2004, p. 12. Available at: <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>

<sup>24</sup> Government of British Columbia, *Urban Aboriginal Strategy*. Available at: <http://www.gov.bc.ca/arr/social/strategy.html>. The Canadian Government has created an interactive map that shows the location of reserves in Canada. For more information, see: <http://fnpim-cippn.aandc-aadnc.gc.ca/index-eng.asp>



CHAPTER 2  
MISSING AND MURDERED INDIGENOUS  
WOMEN IN BRITISH COLUMBIA



# MISSING AND MURDERED INDIGENOUS WOMEN IN BRITISH COLUMBIA

## A. Examining the characteristics of the murders and disappearances

35. The situation of missing and murdered indigenous women in Canada and the lack of an adequate State response have raised both national and international concern.<sup>25</sup> The Government itself recognizes that Canada's official statistics do not provide accurate information regarding the true numbers of missing and murdered indigenous women. In a response to an IACHR request for information on this issue the Canadian State indicated that "unfortunately there are no reliable state statistics with regard to the number of missing and murdered indigenous women in Canada."<sup>26</sup> This issue will be further analyzed in Chapter V of this report.
36. The best numbers available were collected by the non-profit organization, Native Women's Association of Canada (NWAC) through an initiative financed by the governmental entity Status of Women Canada.<sup>27</sup> As of March 31, 2010, NWAC has gathered information regarding 582 cases of missing or murdered indigenous women and girls across the country from the past 30 years.<sup>28</sup> Civil society organizations have long claimed that the number could be much higher, and new research indicates that 824 indigenous women could be missing or dead across Canada.<sup>29</sup> As the NGO Amnesty International pointed out in its 2004 report, "given the relatively small indigenous population and the overall rate of violent crime in Canada, these numbers are truly appalling."<sup>30</sup>

<sup>25</sup> United Nations, CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, U.N.Doc. CEDAW/C/CAN/CO/7, (2008), para. 31. It was also addressed in the *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/20/16, 23 May 2012, para. 65; General Assembly, *Report on the advancement of women of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, transmitted by the Secretary General to the General Assembly. A/66/215, 1 August 2011, para. 37.

<sup>26</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012.

<sup>27</sup> The Sisters In Spirit initiative is a multi-year research, education and policy project or program designed to address the numbers of missing and murdered indigenous women in Canada. Two reports have been published on this issue: *Voices of Our Spirit: A Report of Families and Communities*, 2009 Available at: [http://www.nwac.ca/sites/default/files/imce/NWAC\\_Voices%20of%20Our%20Sisters%20In%20Spirit\\_2nd%20Edition\\_March%202009.pdf](http://www.nwac.ca/sites/default/files/imce/NWAC_Voices%20of%20Our%20Sisters%20In%20Spirit_2nd%20Edition_March%202009.pdf). And, *What Their Stories Tell Us: Research findings from the Sisters in Spirit Initiative*, March 2010, available at: [http://www.nwac.ca/sites/default/files/imce/2010\\_NWAC\\_SIS\\_Report\\_EN.pdf](http://www.nwac.ca/sites/default/files/imce/2010_NWAC_SIS_Report_EN.pdf). NWAC is an aggregate of 13 Native women's organizations from across Canada that was incorporated as a non-profit organization in 1974. For more information, visit: <http://www.nwac.ca/nwac-profile>

<sup>28</sup> NWAC, Fact Sheet: *Missing and Murdered Aboriginal Women and Girls in British Columbia*, Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_BC.pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf); NWAC and FAFIA, *Murders and Disappearances of Aboriginal Women and Girls in Canada*, Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights, 147<sup>o</sup> Period of Sessions, March 12, 2013. The hearing is available at: [www.iachr.org](http://www.iachr.org)

<sup>29</sup> CBC news, *New list of missing, murdered aboriginal women gives families hope*. 25 January 2014. Available at: <http://www.cbc.ca/m/news/#!/content/1.2510650>. Reference is made to a PhD Thesis Research by a PhD candidate, Maryanne Pearce, federal civil servant in Ottawa. See also, <http://www.cbc.ca/news/canada/thunder-bay/research-points-to-exhaustive-list-of-missing-aboriginal-women-1.2516692>

<sup>30</sup> Amnesty International, Report: *Canada, Stolen Sisters, A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, AMR 20/003/2004, p. 14. Available at: <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>

37. Of the 582 cases for which information was compiled by NWAC, 20% involve missing women and girls, 67% involve women or girls who died as the result of homicide or negligence, and 4% fall under the category of suspicious death. In 9% of cases the circumstances of the death or disappearance are unknown.<sup>31</sup>
38. In May 2014, the RCMP released a report in which it documented that police-recorded incidents of homicides of indigenous females and unresolved missing indigenous females amounted to 1,181, a higher number than the estimated figures.<sup>32</sup> The report indicated that there are 181 missing and murdered indigenous women in Canadian police databases: 164 missing (dating back to 1952) and 1,017 murdered (between 1980 and 2012). Of these, there are 225 unsolved cases of either missing or murdered indigenous women.<sup>33</sup>
39. As detailed in other sections of this report, the province of British Columbia has a higher number of missing and murdered indigenous women and girls than any other province or territory in Canada. British Columbia accounts for 160 cases, 28% of NWAC's total database of 582 and is followed by Alberta with 93 cases, 16% of the total.<sup>34</sup>
40. NWAC has found that only 53% of murder cases involving indigenous women and girls have led to charges of homicide.<sup>35</sup> This is dramatically different from the national clearance rate for homicides in Canada, which was last reported as 84%.<sup>36</sup> While a small number of cases in NWAC's database have been "cleared" by the suicide of the offender or charges other than homicide, 40% of murder cases remain unsolved.<sup>37</sup>
41. Of the 160 cases in British Columbia, 63% are murder cases, and 24% are cases of missing women and girls. According to the study, 49% of British Columbia's murder cases in NWAC's database remain unsolved, compared to 39% in NWAC's database Canada-wide.<sup>38</sup> BC also has the highest percentage of "suspicious death" cases.<sup>39</sup> Also, 59% are women and girls under

<sup>31</sup> NWAC, *What Their Stories Tell Us: Research findings from the Sisters in Spirit Initiative*, March 2010. Available at: [http://www.nwac.ca/sites/default/files/imce/2010\\_NWAC\\_SIS\\_Report\\_EN.pdf](http://www.nwac.ca/sites/default/files/imce/2010_NWAC_SIS_Report_EN.pdf)

<sup>32</sup> RCMP, *Missing and Murdered Aboriginal Women: A National Operational Overview*, 2014.

<sup>33</sup> The report indicates that the total of murdered and missing indigenous women outlined in the report differ from existing publicly available figures for a variety of reasons including differences in scope, collection methodology, data mismatches and/or purging of record from closed files. RCMP, *RCMP releases National Operational Review on Missing and Murdered Aboriginal Women*, May 16, 2014. Available at: <http://www.rcmp-grc.gc.ca/news-nouvelles/2014/05-16-eng.htm>

<sup>34</sup> Overall, more than half (54%) of cases occurred in the West, 29% of cases occurred in the south (Manitoba, Ontario and Quebec), 6% took place in the north, and 2% took place in the Atlantic provinces. NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls*. Available at: [http://www.nwac.ca/files/download/NWAC\\_3D\\_Toolkit\\_e\\_0.pdf](http://www.nwac.ca/files/download/NWAC_3D_Toolkit_e_0.pdf). See also IACHR, Notes of Hearing, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 141<sup>st</sup> Period of Sessions, March 28, 2012. The hearing is available at: [www.iachr.org](http://www.iachr.org)

<sup>35</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls*, Available at: [http://www.nwac.ca/files/download/NWAC\\_3D\\_Toolkit\\_e\\_0.pdf](http://www.nwac.ca/files/download/NWAC_3D_Toolkit_e_0.pdf)

<sup>36</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls*, Available at: [http://www.nwac.ca/files/download/NWAC\\_3D\\_Toolkit\\_e\\_0.pdf](http://www.nwac.ca/files/download/NWAC_3D_Toolkit_e_0.pdf)

<sup>37</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls*, Available at: [http://www.nwac.ca/files/download/NWAC\\_3D\\_Toolkit\\_e\\_0.pdf](http://www.nwac.ca/files/download/NWAC_3D_Toolkit_e_0.pdf)

<sup>38</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia*, Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_BC.pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf)

<sup>39</sup> Defined as cases that police have declared natural or accidental but that family or community members consider suspicious. NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia*, Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_BC.pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf); NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

thirty years of age, and the majority of missing women are mothers.<sup>40</sup> Almost half of those charged with crimes against the victims were strangers or acquaintances, with only 10% involved being an intimate partner or family member.<sup>41</sup>

42. As detailed in other sections of this report, the IACHR understands that indigenous women and girls face social and economic disadvantages in Canadian society, a situation which makes them more vulnerable to such violence. Also, according to the information received, the police have failed to adequately prevent and protect indigenous women and girls from this extreme form of violence and have failed to diligently and promptly investigate these acts. This in turn has perpetuated the violence; the failure to enforce consequences for these crimes has given rise to both real and perceived impunity.
43. These high numbers of missing and murdered indigenous women in British Columbia are concentrated in two different areas of the province: Prince George, in the northern part of the province; and the Downtown East Side, an area of downtown Vancouver, the largest city and metropolitan area in the province. The characteristics and circumstances of each of these two areas are described below.

## ***B. Missing and murdered indigenous women in Prince George***

44. Since the 1970s a considerable number of women and girls have been reported missing or murdered along the 724 kilometer length of Highway 16 between Prince Rupert and Prince George,<sup>42</sup> British Columbia, and numerous women, mainly indigenous women, have gone missing or been murdered near three highways in northern and central BC (Highways 16, 97 and 5).<sup>43</sup> As a consequence, the area served by these highways, and Highway 16 in particular, are commonly known by its residents as “The Highway of Tears,” in reference to the number of mostly indigenous women who have gone missing or been killed in the locality.<sup>44</sup> In the words of Brenda Wilson, the sister of Ramona Wilson who went missing in 1994 with her body found 10 months later:

My name is Brenda Wilson, I’m from Smithers<sup>45</sup>[...] and that is where my sister Ramona was from. She is one of the victims of [the] ‘Highway of Tears’. She went missing in 1994,

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<sup>40</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia*, Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_BC.pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf); NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>o</sup> Period of Sessions, March 28, 2012; IACHR, Notes of Hearing, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 141<sup>o</sup> Period of Sessions, March 28, 2012. The hearing is available at: [www.iachr.org](http://www.iachr.org)

<sup>41</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia*, Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_BC.pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf); NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>o</sup> Period of Sessions, March 28, 2012; IACHR, Notes of Hearing, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 141<sup>o</sup> Period of Sessions, March 28, 2012. The hearing is available at: [www.iachr.org](http://www.iachr.org)

<sup>42</sup> Prince George is located approximately 470 miles north of Vancouver.

<sup>43</sup> Human Rights Watch, *Those who take us away, Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia*, February 2013, p 35. Available at: <http://www.hrw.org/reports/2013/02/13/those-who-take-us-away>

<sup>44</sup> Lheili T’enneh First Nation, Carrier Sekani Family Services, Carrier Sekani Tribal Council, Prince George Native Friendship Center, Prince George Nechako Aboriginal Employment & Training Association, “A collective voice for the victims who have been silenced: The Highway of Tears Symposium Recommendations Report”, June 16, 2006. The report says that the term “Highway of Tears” was born out of fear, frustration and sorrow.

<sup>45</sup> Smithers is located on Highways 16, approximately halfway between Prince George and Prince Rupert.



until her body was found ten months later up in an airport [...] My mom was a single parent, but she really did take good care of us, [...] she ended up being stigmatized as a person that didn't take care of her children, [as if that were] why my sister was killed. And it took a lot of years for her to understand that it wasn't her fault, that she was a good mom. [...]. Her life was taken by somebody else, and we still don't know who that is. It's been 19 years, since she was murdered... [...]<sup>46</sup>

We are able to bring a lot of awareness to our community, and to different levels of government. There [have] been a lot of changes made, but the changes are small; and they don't really make a difference in how many people are still going missing today."<sup>47</sup>

45. Many of the missing or murdered women were hitchhiking along this highway. This practice is sometimes a necessity in remote areas with no public transportation, and it can entail great risk, as evidenced by these statistics. Official police records refer to 18 missing or murdered women and girls along these highways between 1969 and 2006, approximately half of them indigenous.<sup>48</sup> NWAC refers to a 2009 investigation by a senior journalist working for the Vancouver Sun newspaper which revealed that another 13 women and girls should be added to the official list of 18, because their disappearances and murders occurred in the same area and in similar circumstances.<sup>49</sup>
46. Some people point to the abduction in 2002 of Nicola Hoar, a young non-indigenous woman who was hitchhiking along a road that connects Prince George and the community of Smithers, and the resulting media and police attention, as the turning point in public awareness of the situation.<sup>50</sup>
47. In 2005 a special E-PANA task force was created to investigate whether a serial killer was responsible for the Highway of Tears murders that took place between 1969 and 2006.<sup>51</sup> The scope of the investigation was limited to 13 homicide investigations and 5 missing person cases that occurred within one mile of the three highways. These cases involved women engaged in what were termed high-risk activities such as hitchhiking.<sup>52</sup> The IACHR was informed that many family members of other missing or murdered women whose cases did not fall within the scope of the investigation were dissatisfied with the process at the beginning of the investigation that led to the choice of this narrow scope. Many families were disappointed

<sup>46</sup> Testimony of Brenda Wilson, Meeting with families of missing and murdered indigenous women in Prince George, August 2013.

<sup>47</sup> Testimony of Brenda Wilson, Meeting with families of missing and murdered indigenous women in Prince George, August 2013.

<sup>48</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012. See also Lheili T'enneh First Nation, Carrier Sekani Family Services, Carrier Sekani Tribal Council, Prince George Native Friendship Center, Prince George Nechako Aboriginal Employment & Training Association, "A collective voice for the victims who have been silenced: The Highway of Tears Symposium Recommendations Report", June 16, 2006.

<sup>49</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012. See also: <http://www.vancouversun.com/news/vanished/Hunt+determine+serial+killer+preying+females+along+highways/2332207/story.html>

<sup>50</sup> Lheili T'enneh First Nation, Carrier Sekani Family Services, Carrier Sekani Tribal Council, Prince George Native Friendship Center, Prince George Nechako Aboriginal Employment & Training Association, "A collective voice for the victims who have been silenced: The Highway of Tears Symposium Recommendations Report", June 16, 2006. Amnesty International, Report: *Canada, Stolen Sisters, A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, AMR 20/003/2004, p. 14. Available at: <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>

<sup>51</sup> PANA is an Inuit word describing the spirit goddess that looks after souls just before they go to heaven or are reincarnated. The investigators on the file chose the name. The Task Force was created as a result of E Division Criminal Operations ordering the review and investigation of the unsolved murders in the area.

<sup>52</sup> Royal Canadian Mounted Police in BC. Available at: <http://cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=1525#tabd11>

because their lost loved ones did not meet the criteria for inclusion in the investigation (female, engaged in high-risk behaviour, disappearance or murder within a mile of Highway 16, 97 or 5). The sentiment of many members of the public in northern British Columbia was that there should have been more women's names on the list of those investigated.

48. The task force did achieve a breakthrough in one case; it identified an American man named Bobby Jack Fowler as a suspect for the murder of 16 year old Colleen MacMillen. The man was linked to the case because his DNA was found in the victim's blouse which had been preserved. There was also research that showed that he was in Canada several times in the early 70's.<sup>53</sup> Investigators also believe that this person may have killed two other young women on the official Highway of Tears list, but so far have not established a link with any other of the murders or disappearances. This investigation continues.<sup>54</sup> To date, most of the Highway of Tears disappearances and murders remain unsolved.

### ***C. Missing and murdered indigenous women in Vancouver's Downtown East Side (DTES)***

49. In the 1990s at least 60 women were reported missing from the Downtown Eastside, an impoverished neighborhood in Vancouver and reportedly the poorest neighborhood in Canada.<sup>55</sup> These women were disproportionately indigenous. They were particularly vulnerable for several reasons, including their residence in or involvement with the DTES, a neighborhood with high levels of poverty and crime. Additionally, many of the women were involved in what have been termed high-risk activities such as drug use and sex work.<sup>56</sup> As the number of women disappearing from the area grew over time, family members of the disappeared, and others, began to recognize a trend and suspect the possibility of one or more serial predators targeting the area.
50. Police investigation into the disappearances began in the mid 1990s. In 1997, a man named William Robert Pickton was arrested and charged with assault involving a knife and attempted murder of a woman on his property, a pig farm outside of Vancouver. However, the prosecutor decided to stay the charges and Pickton was released.<sup>57</sup> The disappearances and murders continued. In 2001, a joint task force known as Project Even-Handed was established by the RCMP and the Vancouver Police Department to investigate together the multiple cases of murdered and missing women from the DTES. While the establishment of the task force improved coordination between different policing authorities there were still flaws in the ways in which the investigation was carried out. Most notably there was

<sup>53</sup> CBS News. 48 Hours: *Highway of Tears murder solved with improbable DNA sample*. November 6, 2012. Available at: <http://www.cbsnews.com/news/48-hours-highway-of-tears-murder-solved-with-improbable-dna-sample/>; National Post, *With one murder solved, difficult "Highway of Tears" investigations go on*, September 25, 2012. Available at: <http://news.nationalpost.com/2012/09/25/with-one-murder-solved-difficult-highway-of-tears-investigations-go-on/>

<sup>54</sup> Meeting with RCMP officials in Prince George. August 2013. See also: Royal Canadian Mounted Police in BC, *E-PANA Announce Significant Development and Request for Public Assistance*. Available at: <http://cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=1075&languageId=1&contentId=27095>

<sup>55</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

<sup>56</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

<sup>57</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

a failure to adequately prevent and investigate the disappearances that were still ongoing during the investigation.

51. Eventually, Robert William Pickton was arrested again in 2002. Pickton was charged with 27 counts of first-degree murder.<sup>58</sup> The majority of the victims in these counts were indigenous.<sup>59</sup> Some relatives of these women spoke of their experiences:<sup>60</sup>

My name is Sandra Sagnom, my sister is one of the missing women from the Pickton's Farm. She went missing in 1997. She was the youngest in my family [...]. As soon as Jenna went missing, I have done everything I can with my parents to try to find her; I went to every newspaper... I did everything I could.

My name is Michelle Pineault, my daughter Stephany Lane was 20 years old when she disappeared in 1997, and in 2003 we found her at Pickton's Farm. She left behind a son that is now 17, and never knew about his mom... It's terrible...

My name is Lorelei Williams [...] and my cousin Tanya [Holyk] went missing in 1996 and her DNA was found at Pickton's Farm.

52. Many were sex workers who were particularly vulnerable to abuse and violence.<sup>61</sup> Pickton would select his victims in the Downtown East Side, offering drugs, money, or both, and take them to his pig farm in Coquitlam, where he sexually assaulted and murdered them.<sup>62</sup> In 2007 Pickton was convicted of 2nd degree murder on six counts and sentenced to 6 terms of life imprisonment without parole. Proceedings on the other counts were stayed in 2010<sup>63</sup> on the basis that "any additional convictions could not result in any increase to the sentence that Mr. Pickton [had] already received."<sup>64</sup> There was evidence at the trial that suggested that Pickton may have murdered as many as 49 women.<sup>65</sup>
53. Despite his arrest and charges in 1997 and compelling information received as early as 1998 and 1999 that suggested that Pickton was the serial killer responsible for the disappearances,<sup>66</sup> it took several years to finally arrest him for his crimes, a period of time during which more

<sup>58</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

<sup>59</sup> Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*. May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

<sup>60</sup> Testimonies of families of missing and murdered indigenous women, Meeting with families of missing and murdered indigenous women, Vancouver, August 2013.

<sup>61</sup> Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*. May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

<sup>62</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>63</sup> Notes of Hearing, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 141<sup>st</sup> Period of Sessions, March 28, 2012. Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*. May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

<sup>64</sup> Lawyers' Watch Canada and the B.C. CEDAW Group. *Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its review of Canada's 19<sup>th</sup> and 20<sup>th</sup> reports. January 2012.

<sup>65</sup> Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*. May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

<sup>66</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

women went missing and were murdered. The factors that may have contributed to this situation included the existence of multiple policing jurisdictions in British Columbia. This resulted in confusion among those authorities regarding responsibility for the investigation. This factor will be analyzed later in this report.

54. According to the information provided by the Vancouver Police Department (“VPD”), between 2000 and Pickton’s ultimate arrest in 2002, an additional 13 women went missing, all of whom are believed by the VPD to have been victims of Pickton.<sup>67</sup> Currently there are two additional open cases of missing indigenous women. One went missing in 2002 and the other in 2010. Both women are believed to have met with foul play and both cases are being investigated as homicides.<sup>68</sup>

#### **D. Experience of the families and victims**

55. Many indigenous people, organizations and civil society groups have criticized the State for failing to prevent and adequately investigate these crimes.<sup>69</sup> Family members coming from small communities have described dismissive attitudes from police officers working on their cases, as well as a lack of adequate resources allocated to the missing women and a failure, for a significant amount of time, both to investigate and to recognize a pattern of violence. During the visit, many families of missing and murdered indigenous women complained that police officers did not take their reports seriously and frequently stereotyped the women as transient.<sup>70</sup>
56. During the visit to Prince George, a family member narrated how in 1993 she tried to report her relative missing 8-9 times and that the police finally took the report in 2000: “this is [19]93, we reported her [missing] eight times, nine times.... they finally took the report in 2000. All that time we were reporting her.”<sup>71</sup> Regarding the disappearance and death of his sister Gloria Moody more than 40 years ago, one family member in Prince George told the IACHR: “for years the RCMP did not do anything, [it] is like if there were different rules for her.”<sup>72</sup> In the words of Brenda Wilson: “it was just devastating, because we tried to ask the police what should we do, or what directions should we take, but there was no assistance at all from the police to help us find her.”<sup>73</sup>
57. In Vancouver, one family representative told the IACHR that when she wanted to report a relative missing from the DTES, police authorities replied: “[w]hoever is doing this is cleaning up the streets.”<sup>74</sup>
58. Family members testifying before the IACHR also indicated that when they reported their loved ones missing, police authorities told them that they had to wait 72 hours, regardless of whether the missing victim was a child. On other occasions, victims’ families had to insist

<sup>67</sup> Information submitted by the Vancouver Police Department after the visit to BC. August, 2013.

<sup>68</sup> Information submitted to the IACHR by the Vancouver Police Department after the visit to BC. August, 2013.

<sup>69</sup> Meeting with families of victims, Prince George and Vancouver, August 2013. Meeting with civil society organizations and families of victims, Ottawa, August 2013.

<sup>70</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights, 144<sup>th</sup> Period of Sessions, March 28, 2012.*

<sup>71</sup> Meeting with families of victims, Vancouver, August 2013.

<sup>72</sup> Testimony of Siam Moody on the disappearance and murder of his sister Gloria Moody. Meeting with families of missing and murdered aboriginal women. Prince George, August 2013.

<sup>73</sup> Testimony of Brenda Wilson, Meeting with families of missing and murdered indigenous women in Prince George, August 2013.

<sup>74</sup> Meeting the civil society in DTES, Vancouver, August 2013.

multiple times before the police would take seriously their concerns.<sup>75</sup> Although the State has indicated that there is no waiting period for reporting a missing person,<sup>76</sup> the many experiences of families of missing and murdered indigenous women who testified before the IACHR indicate something different.

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<sup>75</sup> Meeting with families of victims, Prince George and Vancouver, August 2013. Meeting with civil society organizations and families of victims, Ottawa, August 2013.

<sup>76</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 280.

CHAPTER 3  
VIOLENCE AND DISCRIMINATION  
AGAINST INDIGENOUS WOMEN  
IN BRITISH COLUMBIA



# VIOLENCE AND DISCRIMINATION AGAINST INDIGENOUS WOMEN IN BRITISH COLUMBIA

## A. Indigenous women in Canada

59. The disappearances and murders of indigenous women in Prince George and Vancouver, which are the main focus of this report, are part of a broader pattern of violence and discrimination against indigenous women in Canada. The situation of indigenous women in Canada, in turn, exists within a historical context that includes the colonization process and its impacts in the present day. “[T]hrough policies imposed without their consent, indigenous peoples in Canada ‘have had to deal with dispossession of their traditional territories, disassociation with their traditional roles and responsibilities, disassociation with participation in political and social decisions in their communities, [and] disassociation of their culture and tradition.’”<sup>77</sup> One of the many negative impacts of these policies has been on the relationships between men and women in indigenous communities.
60. In a hearing before the IACHR, civil society organizations addressed the impacts of colonialism on indigenous women. They indicated that patriarchy and male dominance were imposed on matriarchal cultures, targeting the power of indigenous women as decision makers, leaders and equal members of their community:

Before colonization, aboriginal women commanded the highest level of respect as the givers of life and keepers of the traditions and practices of the nation. Many of the Indian nations were matriarchal or semi-matriarchal. Patriarchy and male dominance were introduced through missionaries and subsequently made law through the Indian Act. Colonialism turned woman into Squaw. The Squaw is degraded and dehumanized and is the female counterpart to the Indian male savage. She has no human face; she is lustful, immoral, and dirty. This grotesque depiction of aboriginal women has left them degraded and more vulnerable to physical, verbal and sexual violence.<sup>78</sup>

61. Two historic policies in particular must be analyzed in order to understand the current situation of indigenous women in Canada. These policies have had and continue to have a “profound and lasting impact on social strife within indigenous communities and on the marginalization of indigenous women within Canadian Society.”<sup>79</sup> First, the collection of laws determining Aboriginal status. These laws frequently restricted the freedom of women who identified themselves as indigenous to be recognized as such.

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<sup>77</sup> Amnesty International, Report: *Canada, Stolen Sisters, A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, AMR 20/003/2004, p. 8. Quoting Beverley Jacobs, “Native Women’s Association of Canada’s submission to the United Nations Special Rapporteur investigating the Violations of Indigenous Human Rights,” December, 2002. Available at: <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>

<sup>78</sup> IACHR, 144<sup>o</sup> Period of Sessions, *Hearing on Complaints regarding Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*, March 28, 2012, Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>

<sup>79</sup> Amnesty International, Report: *Canada, Stolen Sisters, A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, AMR 20/003/2004, p. 8. Available at: <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>



Second, the residential schools program that separated indigenous children from their families, communities, and cultural heritage.

## 1. Laws determining Aboriginal status

62. The 1996 report of the Royal Commission on Aboriginal Peoples stated that “[i]f Indian people generally can be said to have been disadvantaged by the unfair and discriminatory provisions of the *Indian Act*, Indian women have been doubly disadvantaged”<sup>80</sup> particularly “with regard to discriminatory provisions on land surrender, wills, band elections, Indian status, band membership and enfranchisement.”<sup>81</sup> Although an in-depth analysis of the impact of the Indian Act on indigenous women falls outside of the scope of this report, the IACHR will refer to some of the provisions of the Indian Act that affected women’s right to be free of discrimination, as well as the ongoing effects of these provisions. The Indian Act has been revised on several occasions since its enactment. It establishes Canada’s obligations toward Indians and regulates the management of Indian resources.
63. Indigenous women were particularly disadvantaged by the Indian Act, which, among other things, deprived them of their Indian status when they married non-Indians and of their band affiliation when they married an Indian man from another band. Also, children born from an indigenous woman married to a non-indigenous man were not recognized as indigenous. In contrast, and as an example of gender discrimination in the Act, indigenous men conferred Indian Status on their non-indigenous wives and on their children.<sup>82</sup> Aside from the emotional and psychological consequences of being denied this identity, women who lost status also lost the benefits that accompany it, such as the right to live on reserve lands.
64. Under the Indian Act, a woman was transferred to her husband’s band upon marriage and was not permitted to live on her birth reserve.<sup>83</sup> This was aggravated by the fact that only band members could live on reserve. As a consequence, women had to leave their communities and move to another reserve, leaving behind their social and family support. The loss of a woman’s home band membership also meant that she lost any income from annuities from her former band, reducing her economic independence.<sup>84</sup>
65. In 1981 the United Nations Human Rights Committee (“UNHRC”) responded to a communication from an indigenous woman who lost her Indian status in Canada when she married a non-Indian man. She argued that the law discriminated against her on the basis of gender. The UNHRC found that preventing the victim’s recognition as belonging to the band

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<sup>80</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 9.1. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)

<sup>81</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 9.1. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)

<sup>82</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 9. Available at: [http://www.colletionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.colletionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)

<sup>83</sup> Indigenous Foundations, University of British Columbia, *Marginalization of Aboriginal Women*. Available at: <http://indigenousfoundations.arts.ubc.ca/home/community-politics/marginalization-of-aboriginal-women.html>

<sup>84</sup> Battered Women’s Support Services. *Presentation to Inter-American Commission on Human Rights*. Prepared by Brandy Kane, Manager, Indigenous Women’s Program and Angela Maria MacDougall, Executive Director, Vancouver, Coast Salish Territories, August 2013.

was unjustifiable and therefore the State had violated the right of members of a minority group to enjoy their own culture.<sup>85</sup>

66. A reform bill was then passed by Parliament in 1985 (Bill C-31, *An Act to amend the Indian Act*) that restored the Indian status of some indigenous women who had lost status due to marrying non-indigenous men.<sup>86</sup> The amendment addressed some of the discriminatory provisions within the Indian Act and ended the practice of gaining or losing status through marriage. While women who had lost status by marrying non-Indian men were able to regain status, as were their children, the second generation, meaning their grandchildren, could not necessarily do so. The law created two categories of status. The first category included, inter alia, all those who already had status, as well as women who had been involuntarily disenfranchised upon marrying non-Indian men. The second category was for children who had only one parent falling under the first category. For the second generation, the requirement for status was either one parent within the first category or two parents with status in either category.<sup>87</sup> Due to the discriminatory allocation of status in the past, the descendants of an Indian woman who married a non-Indian man were subject to the second generation cut-off, at which point status could no longer be transmitted. This permanent loss of status took effect one generation sooner for the descendants of those women, in contrast with the descendants of an Indian man who married a non-Indian woman.<sup>88</sup>
67. Following the 1985 amendment, Sharon McIvor, an indigenous woman brought a suit against the government, arguing that Bill C-31 did not fully address these issues of gender discrimination. In 2009 the British Columbia Court of Appeal ruled in her favor, but allowed twelve months for the national Parliament to address the problem legislatively.<sup>89</sup> In 2010 Canada approved Bill C-3, the Gender Equity Registration Act, which addressed the specific type of situation presented in the McIvor case. This amendment came into force in January 2011.
68. On the basis of the information received and analyzed, the IACHR considers that under the current state of the law, however, some provisions that have a discriminatory effect for indigenous women remain. In particular, Bill C-3's amendment adds a new category to the first, more privileged status group, but it hinges in part on whether a woman has children or not.<sup>90</sup> In addressing only particular subsets of indigenous women who faced this discrimination, the Indian Act as amended fails to fully address remaining concerns about gender equality.
69. Indigenous women face multiple challenges with respect to securing status for themselves and their children, and in some cases the presence of a second, intermediate status classification

<sup>85</sup> United Nations Human Rights Committee, *Sandra Lovelace v. Canada*, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) (1981). Available at: <http://www1.umn.edu/humanrts/undocs/session36/6-24.htm>

<sup>86</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal Peoples*, Volume 1, Part 2, Chapter 9. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html). See also, Parliament of Canada, Indian Status and Band Membership issues. Available at: <http://www.parl.gc.ca/content/lop/researchpublications/bp410-e.htm>

<sup>87</sup> Native Women's Association of Canada, *Guide to Bill C-31, 1986*. Available at: <http://www.nwac.ca/files/reports/GuidetoBillC31.pdf>

<sup>88</sup> National Aboriginal Law Section of the Canadian Bar Association, *Bill C-3 - Gender Equity in Indian Registration Act*, April 2010. Available at: <https://www.cba.org/CBA/submissions/pdf/10-21-eng.pdf>

<sup>89</sup> National Aboriginal Law Section of the Canadian Bar Association, *Bill C-3 - Gender Equity in Indian Registration Act*, April 2010. Available at: <https://www.cba.org/CBA/submissions/pdf/10-21-eng.pdf>

<sup>90</sup> National Aboriginal Law Section of the Canadian Bar Association, *Bill C-3 - Gender Equity in Indian Registration Act*, April 2010. Available at: <https://www.cba.org/CBA/submissions/pdf/10-21-eng.pdf>

can rise to the level of cultural and spiritual violence against indigenous women, since it creates a perception that certain subsets of indigenous women are less purely indigenous than those with “full” status.<sup>91</sup> This can have severe negative social and psychological effects on the women in question, even aside from the consequences for a woman’s descendants.

70. Additionally, in order for the children of an indigenous woman to be recognized as having full status, the administrative policy is that the identity of the father must be declared and the signatures of both parents must be presented, otherwise it will automatically be assumed that the father is non-Indian.<sup>92</sup>
71. According to the information reviewed, between 1876 and 1985 approximately 25,000 indigenous women lost status and had to leave their communities.<sup>93</sup> It is important to keep in mind that for every woman who lost status and had to leave her community, all of her descendants also lost status. When Bill C-31 was passed in 1985 there were only 350,000 status Indians left in Canada. Because Bill C-31 allowed individuals who had lost status to regain it, and also allowed their children to regain status, and approximately 100,000 individuals had regained their status by 1995.<sup>94</sup> However:

the damage caused, demographically and culturally, by the loss of status of so many Native women for a century prior to 1985, whose grandchildren and great-grandchildren are now no longer recognized –and in many cases no longer identify – as Indian, remain[s] incalculable.<sup>95</sup>

72. The IACHR has been informed that many women and their children who have recovered Indian status as a result of the 1985 amendments have been nevertheless unable to secure band membership. This is because those same amendments gave bands the power to control their own membership criteria, meaning that some bands can create obstacles for women attempting to reestablish membership after marrying outside of the community.<sup>96</sup> A lack of funds for band administration in particular may make bands reluctant to grant membership to increasing numbers of people as they gain or regain status.<sup>97</sup>

## 2. Legacy of residential schools

73. During the IACHR visit, the legacy of the residential schools program and its particular effects on women were repeatedly raised by different parties as a cause and a consequence of discrimination and violence against indigenous women and girls.<sup>98</sup> From 1879 to 1996 the Canadian government

<sup>91</sup> ACHR, *Report on Discrimination against Indigenous Women in the Americas*, Information presented during hearing. 144<sup>o</sup> Period of Sessions, March 2012.

<sup>92</sup> IACHR, *Report on Discrimination against Indigenous Women in the Americas*, Information presented during hearing. 144<sup>o</sup> Period of Sessions, March 2012.

<sup>93</sup> Bonita Lawrence, *Gender, Race and the Regulation of Native Identity in Canada and the United States: An Overview*, Hypatia, Volume 18, Number 2, Spring 2003, pp. 3-31.

<sup>94</sup> Bonita Lawrence, *Gender, Race and the Regulation of Native Identity in Canada and the United States: An Overview*, Hypatia, Volume 18, Number 2, Spring 2003, pp. 3-31.

<sup>95</sup> Bonita Lawrence, *Gender, Race and the Regulation of Native Identity in Canada and the United States: An Overview*, Hypatia, Volume 18, Number 2, Spring 2003, pp. 3-31.

<sup>96</sup> See Val Napoleon, *Extinction by Number: Colonialism Made Easy*, 16 CAN. J.L. & SOC. 113, 122 (2001).

<sup>97</sup> National Aboriginal Law Section of the Canadian Bar Association, *Bill C-3 - Gender Equity in Indian Registration Act*, April 2010. Available at: <https://www.cba.org/CBA/submissions/pdf/10-21-eng.pdf>

<sup>98</sup> See also, NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>o</sup> Period of Sessions, March 28, 2012.

established a mandatory residential schools policy for indigenous children. Indigenous children were removed from their families in large numbers and placed in boarding schools where they were encouraged to learn crafts and trades while being cut off from their indigenous traditions and cultures. Many were taken from their homes by force. In addition to their key role in an aggressive government policy of assimilation, the residential schools provided an inferior education and the school management and employees frequently mistreated and abused their students emotionally, physically, and sometimes sexually.<sup>99</sup> The students often received inadequate or rotten food, were confined for extended periods of time, and faced beatings or other punishments for misbehavior.<sup>100</sup> They lived away from their families and were not permitted to communicate in their native languages, including in letters to their families, who often did not speak English or French.

74. Former students brought a class action suit against the Canadian government and the churches that operated the schools. Ultimately, they reached a settlement that required compensation to former students of the residential schools.<sup>101</sup> The settlement also mandated that the government set up a Truth and Reconciliation Commission regarding the matter. The Truth and Reconciliation Commission was mandated to investigate what occurred at residential schools and take statements from those affected. The Commission has currently collected over 6,000 statements and is continuing to host events where people are invited to present their statements. The statements will be stored in a research center where they will be publically available in the future.<sup>102</sup> Also, in 2008 the federal government officially apologized to indigenous people for the harm done to them by the residential schools program.<sup>103</sup>
75. The legacy of the residential school system continues to have serious consequences for generations of indigenous people who survived it, in terms of social dislocation, the breakdown of families and communities, and trauma for former students. There is consensus that many of the social and economic problems experienced by its survivors and their families are both a consequence of that legacy and serve to perpetuate the discrimination and suffering. According to the information received, many indigenous students grew up separated from their cultures, language and families. This affected their sense of identity and their relationships to their families and communities.<sup>104</sup>

<sup>99</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 10. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html); Indigenous Foundations, *The Residential School System*, University of British Columbia, Available at: <http://indigenousfoundations.arts.ubc.ca/home/government-policy/the-residential-school-system.html>

<sup>100</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 10.3. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html); Indigenous Foundations, *The Residential School System*, University of British Columbia, Available at: <http://indigenousfoundations.arts.ubc.ca/home/government-policy/the-residential-school-system.html>

<sup>101</sup> For more information, see Fact Sheet, Indian Residential Schools Settlement Agreement. Available online at: <http://www.residentialschoolsettlement.ca/AIP.pdf>. See also <https://www.aadnc-aandc.gc.ca/eng/1332949137290/1332949312397>

<sup>102</sup> For updates on the Truth and Reconciliation Commission's progress and operations, refer to its website: <http://www.trc.ca/websites/trcinstitution/index.php?p=3>

<sup>103</sup> Statement of Apology. *Primer Minister Harper offers full apology on behalf of Canadians for the Indian Residential Schools system*. Available at: <https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>

<sup>104</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 10.4. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html); Indigenous Foundations, *The Residential School System*, University of British Columbia, Available at: <http://indigenousfoundations.arts.ubc.ca/home/government-policy/the-residential-school-system.html>

76. The destruction of family and community bonds, combined with the psychological effects of abuse, has also impacted former students' abilities to raise their own children. The IACHR was informed about the intergenerational effects of residential schools, in which those forced to attend residential schools were deprived of family support and positive parenting role models, which has affected not only their lives but those of their children and grandchildren.<sup>105</sup>

## ***B. Discrimination and inequality against indigenous women***

77. Indigenous women and girls constitute one of the most disadvantaged groups in Canada. Poverty, inadequate housing, and economic and social relegation, among other factors, contribute to their increased vulnerability to violence.
78. This persistence of longstanding social and economic marginalization has given rise to large numbers of indigenous women living in vulnerable situations, including homelessness, and abusive relationships. It has also led to the disproportionate engagement of indigenous women in high-risk activities such as hitchhiking, drug use, gang activity, and prostitution.<sup>106</sup> These vulnerable situations and high risk activities perpetuate vulnerability to violence by making it more difficult for these indigenous women to escape the vicious cycle of violence. As noted in submissions to the IACHR regarding indigenous women:

They face discrimination on multiple fronts: as women within their home communities due to the patriarchal legacy of colonization, as women in mainstream society, and as Aboriginal persons in mainstream society. Overall, Aboriginal women in Canada experience extreme economic and social disparity and hardship, including high rates of poverty and unemployment, lower educational attainment, poor health, lack of access to clean water, and overcrowded, substandard housing—factors that make escaping violence difficult.<sup>107</sup>

79. Despite measures undertaken by the Government of Canada, the UN Committee on the Elimination of Racial Discrimination expressed concern about “the persistent levels of poverty among Aboriginal Peoples, and the persistent marginalization and difficulties faced by them in respect of employment, housing, drinking water, health and education, as a result of structural discrimination whose consequences are still present.”<sup>108</sup> In the same vein, the CEDAW Committee expressed concern about the fact that poverty is widespread in particular among indigenous women.<sup>109</sup>
80. The CEDAW Committee stated:

The Committee is concerned at the fact that aboriginal women and women of various ethnic and minority communities continue to suffer from multiple forms of

<sup>105</sup> Government of Canada. Indian and Northern Affairs Canada, *Report of the Royal Commission on Aboriginal peoples*, Volume 1, Part 2, Chapter 10.4. Available at: [http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html)

<sup>106</sup> IACHR, *Situation of the Right to Life of Indigenous Women and Girls in Canada*, 147<sup>th</sup> Period of Sessions, March 12, 2013, Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>

<sup>107</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>108</sup> UN CERD Committee, *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/CAN/CO/19-20, 9 March 2012.

<sup>109</sup> UN CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, Canada, CEDAW/C/CAN/CO/7, 7 November 2008.

discrimination, particularly in terms of access to employment, housing, education and health care. The Committee notes the existence of a number of programmes, policies and activities aimed at addressing discriminatory treatment of aboriginal women. Nevertheless, it notes with regret that 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 also notes with concern that women from ethnic and minority communities are also exposed to a high level of violence and are significantly underrepresented in political and public life.<sup>110</sup>

81. Regarding education, indigenous women obtain lower levels on average compared to non-indigenous women. Although the government has taken some steps to improve the access of indigenous women to education, there is still a lot to be done in this regard. Figures from 2006 indicated that 35% of indigenous women aged 25 and over had not graduated from high school, compared to 20% of non-indigenous women.<sup>111</sup> Similarly, 10% of indigenous women had a university degree compared to 20% of non-indigenous women. The IACHR was informed that one in ten indigenous adults had a university degree in 2011, an increase from 7.7% in 2006 and women comprise the majority of the indigenous population with a university or college degree by almost a two to one margin.<sup>112</sup> Within the indigenous population, almost two thirds of those with a university degree were female (65.4%).<sup>113</sup> This compares to just over half (53.6%) for the non-indigenous population. Indigenous women were also more prevalent among those with college/other certificates (64.1%), while making up a third of those with trades certificates (34.9%).<sup>114</sup>
82. Despite certain gains in access to education and training, the unemployment rate for indigenous women was twice that of non-indigenous women.<sup>115</sup> In 2005 the median income for indigenous women was \$15,654 compared to \$20,640 for non-indigenous women. The disparity in wage earnings is even greater, as one quarter of indigenous women's income came from government transfer payments, including 9% of all income of indigenous women coming from child benefits.<sup>116</sup> In 2005, 37% of First Nations women living off reserve had incomes below Canada's low income cut-off, double the poverty rate for non-indigenous women<sup>117</sup>

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<sup>110</sup> UN CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women, Canada*, CEDAW/C/CAN/CO/7, 7 November 2008, para. 43.

<sup>111</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>112</sup> State of Canada, Aboriginal Affairs and Northern Development Canada, *Highlights on Aboriginal Educational Attainment and Labour Market Outcomes from the 2011 National Household Survey*, June 2013. Information provided to the IACHR during the visit to Canada.

<sup>113</sup> State of Canada, Aboriginal Affairs and Northern Development Canada, *Highlights on Aboriginal Educational Attainment and Labour Market Outcomes from the 2011 National Household Survey*, June 2013. Information provided to the IACHR during the visit to Canada.

<sup>114</sup> State of Canada, Aboriginal Affairs and Northern Development Canada, *Highlights on Aboriginal Educational Attainment and Labour Market Outcomes from the 2011 National Household Survey*, June 2013. Information provided to the IACHR during the visit to Canada.

<sup>115</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>116</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>117</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

83. Many indigenous women live in overcrowded homes.<sup>118</sup> The Auditor General indicated that the investments in housing had not “kept pace with either the demand for new housing or the need for major renovations to existing units.”<sup>119</sup> Moreover, the housing shortage on reserves has worsened due to: increases in the demand for on-reserve housing; the aging and deterioration of housing units, leading to increased numbers of units in need of replacement; and increases in the number of units requiring significant renovations for health and safety reasons.<sup>120</sup>
84. The lack of adequate housing was frequently raised during the Commission’s visit as one of the key factors affecting indigenous women in Canada, and one of the factors that increases the vulnerability of indigenous women to violence. In his 2009 report following his mission to Canada, the United Nations Special Rapporteur on Adequate Housing noted that inadequate and insecure housing in Canada “particularly impacts women who are disproportionately affected by poverty, homelessness, housing affordability problems, violence and discrimination on the private rental market.”<sup>121</sup> In his report, the Special Rapporteur found that indigenous women face some of the most severe housing problems in Canada, in both urban and rural areas.<sup>122</sup> For its part, the CEDAW Committee expressed concern about the impact on women of: the absence of a national housing strategy; the current severe housing shortage, which is particularly severe in indigenous communities; and the high costs of rent; all despite the fact that federal spending on housing had never been higher.<sup>123</sup>
85. During the visit the IACHR was informed that the lack of adequate housing directly impacts indigenous women’s capacity to keep custody of their children. According to the information reviewed, under the child protection legislation in British Columbia, “neglect” is defined as “failure to provide for a child’s basic needs: food, clothing, adequate shelter, supervision and medical care.”<sup>124</sup> Therefore, indigenous women who are victims of violence often avoid reporting incidents of violence to the authorities or seeking help and are afraid to leave their partners because of fear of removal of their children if they are considered to be unable to provide for their children’s basic needs on their own.<sup>125</sup>

<sup>118</sup> IACHR, *Situation of the Right to Life of Indigenous Women and Girls in Canada*, 147<sup>th</sup> Period of Sessions, March 12, 2013, Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>. In this regard, the IACHR observes that in an opening statement to the Senate Standing Committee on Aboriginal Peoples, which followed up on a 2011 audit affecting First Nations, the Auditor General indicated that conditions did not improve for First Nations in the following audited areas: the shortage of adequate housing on reserves increased, the presence of mould on reserves remained a serious problem, and administrative reporting requirements remained burdensome. Office of the Auditor General of Canada, *Opening Statement to the Senate Standing Committee on Aboriginal Peoples, Programs for First Nations on Reserves*, 5 February 2014. Available at: [http://www.oag-bvg.gc.ca/internet/English/oss\\_20140205\\_e\\_39080.html](http://www.oag-bvg.gc.ca/internet/English/oss_20140205_e_39080.html)

<sup>119</sup> Office of the Auditor General of Canada, *Opening Statement to the Senate Standing Committee on Aboriginal Peoples, Programs for First Nations on Reserves*, 5 February 2014. Available at: [http://www.oag-bvg.gc.ca/internet/English/oss\\_20140205\\_e\\_39080.html](http://www.oag-bvg.gc.ca/internet/English/oss_20140205_e_39080.html)

<sup>120</sup> Office of the Auditor General of Canada, *Opening Statement to the Senate Standing Committee on Aboriginal Peoples, Programs for First Nations on Reserves*, 5 February 2014. Available at: [http://www.oag-bvg.gc.ca/internet/English/oss\\_20140205\\_e\\_39080.html](http://www.oag-bvg.gc.ca/internet/English/oss_20140205_e_39080.html)

<sup>121</sup> UN Special Rapporteur on the Right to Adequate housing, *Mission to Canada*, A/HRC/10/1/Add.3, 17 February 2009.

<sup>122</sup> UN Special Rapporteur on the Right to Adequate housing, *Mission to Canada*, A/HRC/10/1/Add.3, 17 February 2009, paras. 94 and 96.

<sup>123</sup> UN CEDAW Committee, *Concluding Observations of the Committee on the Elimination of discrimination against Women, Canada*, CEDAW/C/CAN/CO/7, 7 November 2008.

<sup>124</sup> Lawyers’ Watch Canada and the B.C. CEDAW Group. *Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its review of Canada’s 19<sup>th</sup> and 20<sup>th</sup> reports, January 2012.

<sup>125</sup> House of Commons Canada. *Interim Report Call into the Night: an Overview of Violence against Women, Standing Committee on the Status of Women*, Hon. Hedy Fry, MP, Chair, March 2011, 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session. Lawyers’ Watch Canada and the B.C. CEDAW Group. *Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its review of Canada’s 19<sup>th</sup> and 20<sup>th</sup> reports, January 2012.

86. The IACHR was informed that indigenous women are ten times more likely to have children taken away by state agencies than non-indigenous women.<sup>126</sup> The IACHR is alarmed by the overrepresentation of indigenous children and youth in the child welfare system.<sup>127</sup> Data from the 1998 and 2008 Canadian Incidence Study of Reported Child Abuse and Neglect indicate that indigenous children represent approximately 25% of children in government care, despite the fact that they only account for 5% of Canada's child population.<sup>128</sup> There are three times as many First Nations children in state-sponsored care today than at the height of the residential schools era.<sup>129</sup> The available figures indicate that as of March 31, 2010, approximately 8,682 children living on reserves were in care outside the parental home. This proportion is almost eight times that of children living off reserves. These numbers do not include the number of indigenous children who are in care under the support of provincial and territorial welfare services.<sup>130</sup> This situation raises concerns related to the deterioration of family ties and identity. The UN Committee on the Rights of the Child has expressed concern over the overrepresentation of indigenous children in the child welfare system in Canada. The UN Committee on the Rights of the Child noted that such children are often unable to preserve their identity, claim their rights, and make and maintain connections to their families, communities and culture.<sup>131</sup>
87. The possibilities for indigenous children and youth in Canada to exit the cycle of poverty are very limited.<sup>132</sup> Exposure to the child welfare system often correlates with subsequent engagement in high risk behavior. This behavior, in turn, often exposes such children to violence.<sup>133</sup> Some civil society organizations indicated that this had been the case for girls from foster homes who ended up in Vancouver's Downtown Eastside.<sup>134</sup> According to the Canadian Council of Provincial Child and Youth Advocates, "the connection between poverty and child welfare involvement is well known in the literature and in experience."<sup>135</sup> Moreover:

When deep intergenerational poverty persists, the default solution may become the child welfare system, with removals of children, inadequate opportunities to work to support

<sup>126</sup> IACHR, 147<sup>th</sup> Period of Sessions, *Situation of the Right to Life of Indigenous women and Girls in Canada*. March 12, 2013, Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>. See also, IACHR, 144<sup>th</sup> Period of Sessions, *Hearing on Complaints regarding Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*, March 28, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>. Analysis of data from the 1998 and 2003 Canadian Incidence Study of Reported Child Abuse and Neglect indicate that although Aboriginal children represent only 5% of Canada's child population, they represent approximately 25% of children in government care. Canadian Council of Provincial Child and Youth Advocates, *Aboriginal Children en Youth in Canada: Canada Must do Better*, June 23, 2010.

<sup>127</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas*, OEA/Ser.L/V/II. Doc. 54/13, 17 October 2013, para. 191.

<sup>128</sup> Canadian Council of Provincial Child and Youth Advocates, *Aboriginal Children en Youth in Canada: Canada Must do Better*, June 23, 2010. Available at: <https://www.gnb.ca/0073/PDF/positionpaper-e.pdf>

<sup>129</sup> House of Commons Canada. *Interim Report Call into the Night: an Overview of Violence against Women*, Standing Committee on the Status of Women, Hon. Hedy Fry, MP, Chair, March 2011, 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session.

<sup>130</sup> House of Commons Canada. *Interim Report Call into the Night: an Overview of Violence against Women*, Standing Committee on the Status of Women, Hon. Hedy Fry, MP, Chair, March 2011, 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session.

<sup>131</sup> Committee on the Rights of the Child. *Concluding Observations on the combined third and fourth periodic report of Canada*, adopted by the Committee at its 61st Session. CRC/C/CAN/CO/3-4, 6 December 2012, paras 42-43.

<sup>132</sup> Canadian Council of Provincial Child and Youth Advocates, *Aboriginal Children en Youth in Canada: Canada Must do Better*, June 23, 2010, p. 6.

<sup>133</sup> House of Commons Canada. *Interim Report Call into the Night: an Overview of Violence against Women*, Standing Committee on the Status of Women, Hon. Hedy Fry, MP, Chair, March 2011, 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session.

<sup>134</sup> Meeting with civil society organizations. Vancouver, August 2013.

<sup>135</sup> Canadian Council of Provincial Child and Youth Advocates, *Aboriginal Children en Youth in Canada: Canada Must do Better*, June 23, 2010, page. 6. Available at: <https://www.gnb.ca/0073/PDF/positionpaper-e.pdf>



family restoration or strength, and an acceptance of a rate of neglect or maltreatment of children that is unacceptable.<sup>136</sup>

88. Furthermore, indigenous women and girls are overrepresented in Canada's prison population, an issue of grave concern that has been noted by several UN bodies.<sup>137</sup> Indigenous women represent 28% of women incarcerated and 37% of women sentenced to prison, although they only constitute approximately 4% of the Canadian adult population.<sup>138</sup> According to the figures received, in 2008-2009 indigenous female youth were 6% of the Canadian female population yet 44% of the female youth in custody. The percentage of indigenous girls in prison seems to be growing.<sup>139</sup> The overrepresentation of indigenous women in Canada's prison population is another manifestation of the historical discrimination they have suffered:

The story of how so many Aboriginal women came to be locked up within federal penitentiaries is a story filled with a long history of dislocation and isolation, racism, brutal violence as well as enduring a constant state of poverty beyond poor.<sup>140</sup>

89. The Government of Canada has acknowledged the social and economic obstacles that indigenous people, especially indigenous women, confront. According to the Government of Canada:

The challenges facing Aboriginal peoples, including Aboriginal women, are long-standing, multifaceted and complex. These include a legacy of cultural and economic disruption through the colonization process, a history of abuse in residential schools, lower educational achievement, higher unemployment rates, and higher levels of alcohol and substance abuse.<sup>141</sup>

Addressing the underlying issues contributing to the violence experienced by Aboriginal women and girls warrants coordinated attention from all levels of government. These solutions cut across many different sectors, including the justice system, public safety, policing, gender issues, health and Aboriginal affairs.<sup>142</sup>

<sup>136</sup> Canadian Council of Provincial Child and Youth Advocates, *Aboriginal Children en Youth in Canada: Canada Must do Better*, June 23, 2010. Available at: <https://www.gnb.ca/0073/PDF/positionpaper-e.pdf>. Lawyers' Watch Canada and the B.C. CEDAW Group. *Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its review of Canada's 19<sup>th</sup> and 20<sup>th</sup> reports, January 2012.

<sup>137</sup> UN, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*. CEDAW/C/CAN/CO/7, 7 November 2008, para. 33. *Committee on the Elimination of Racial Discrimination*, CERD/C/CAN/CO/19-20 (9 March 2012).

<sup>138</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>139</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>140</sup> Mandy Wesley LLB, The Wesley Group, *Marginalized: The Aboriginal Women's experience in Federal Corrections*. Available at Public Safety Canada: <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/mrgnlzd-eng.pdf>

<sup>141</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 205.

<sup>142</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 206.

## 1. The nature and manifestations of violence against indigenous women

90. As mentioned earlier in this report, the numbers of missing and murdered indigenous women are particularly concerning when considered in light of the fact that indigenous people represent a small percentage of the total population of Canada. However, this extreme form of violence is just the tip of the iceberg. Indigenous women and girls face considerably higher incidence of violence and homicide in the country.<sup>143</sup> A 1996 Report by Indian Affairs Canada indicated that indigenous women between the ages of 25 and 44 are five times more likely to die as the result of violence than non-indigenous Canadian women of the same age.<sup>144</sup> In a statement issued following a country visit to Canada, the UN Special Rapporteur on the Rights of Indigenous Peoples noted “the disturbing phenomenon of Aboriginal women missing and murdered at the hands of both Aboriginal and non-Aboriginal assailants.”<sup>145</sup> According to the press release, indigenous women are eight times more likely to be murdered than non-indigenous women.<sup>146</sup>
91. Several official and civil society reports demonstrate that indigenous women are victims of higher rates of violence committed by strangers.<sup>147</sup> The RCMP Report indicated that indigenous women were most often murdered by an acquaintance (30% compared to 19% for non-indigenous women). Spousal relationships were also prominent, though indigenous women were less often killed by a current or formal spouse (29% compared to 41% for non-indigenous women).<sup>148</sup> During the IACHR visit the Canadian government indicated that indigenous women are significantly over-represented as victims of homicide and are also three times more likely to be victims of violence than non-indigenous women.<sup>149</sup> The IACHR was also informed that the suicide rate is seven times higher among indigenous women than among non-indigenous women.<sup>150</sup>
92. According to Statistics Canada, indigenous women suffer more frequently from more severe forms of domestic violence than non-indigenous Canadian women.<sup>151</sup> Indigenous women were more likely to indicate that they feared for their lives as a result of spousal violence (52% of indigenous female victims of domestic violence versus 31% of non-indigenous female

<sup>143</sup> RCMP follow up response to the IACHR after the working visit.

<sup>144</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012. Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and violence against Indigenous Women in Canada* (2004). See also: <http://www.vancouver.sun.com/news/vanished/Hunt+determine+serial+killer+preying+females+along+highways/2332207/story.html>, citing *Aboriginal Women: A Demographic, Social and Economic Profile*, Indian and Northern Affairs Canada (Summer 1996)

<sup>145</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, Statement after conducting country visit to Canada, 15 October 2013.

<sup>146</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, Statement after conducting country visit to Canada, 15 October 2013.

<sup>147</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012.

<sup>148</sup> RCMP, *Missing and Murdered Aboriginal Women: A National Operational Overview*. Available at: <http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.htm#sec3>

<sup>149</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012; RCMP follow up response to the IACHR after the working visit.

<sup>150</sup> IACHR, 147<sup>th</sup> Period of Sessions, *Situation of the Right to Life of Indigenous women and Girls in Canada*. March 12, 2013, Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>

<sup>151</sup> Juristat Article. *Measuring violence against women: Statistical trends*, Edited by Maire Sinha Canadian Centre for Justice Statistics, Released on February 25, 2013, p. 19. Available at <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>

victims of domestic violence).<sup>152</sup> The higher likelihood of injury and fear among indigenous female victims may be partly related to the nature of spousal violence in question. Indigenous women often reported the most severe forms of violence, including sexual assaults, beatings, chokings, and threats with a gun or a knife.<sup>153</sup>

93. Canadian authorities and civil society organizations agree on the root causes of these high levels of violence against indigenous women and the existing vulnerabilities that make indigenous women more susceptible to violence<sup>154</sup>. These root causes are related to a history of discrimination beginning with colonization and continuing through laws and policies such as the Indian Act and residential schools. These root causes have laid the foundations of pervasive violence against indigenous women, and have created circumstances that contribute to the risks these women face, through economic poverty, social dislocation, and psychological trauma. According to NWAC:

Aboriginal women and girls are amongst the most socially and economically disadvantaged groups in Canada, with many of these disadvantages rooted in historical and modern day effects of colonization. Aboriginal women also face severe economic and social hardship, including high rates of poverty and unemployment, lower educational attainment, poor health, lack of access to clean water, and overcrowded, substandard housing. Aboriginal women and girls face discrimination on multiple fronts: as women in their home communities due to the patriarchal legacy of colonization, as women in mainstream society, and as Aboriginal persons in mainstream society.<sup>155</sup>

94. In the same vein, the Standing Committee on the Status of Women (a standing committee of the Canadian House of Commons, Canada's national parliament) identified the following factors linked to violence against indigenous women: economic and social inequalities; discrimination against indigenous peoples; possible loss of understanding of their history and culture; residential schools; and the intergenerational cycle of violence.<sup>156</sup> The Standing Committee identified poverty as the most important factor in the violence that indigenous women face.<sup>157</sup>

<sup>152</sup> Juristat Article. *Measuring violence against women: Statistical trends*, Edited by Maire Sinha Canadian Centre for Justice Statistics, Released on February 25, 2013, p. 19. Available at <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>

<sup>153</sup> Juristat Article. *Measuring violence against women: Statistical trends*, Edited by Maire Sinha Canadian Centre for Justice Statistics, Released on February 25, 2013, p. 19. Available at <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>

<sup>154</sup> See: Amnesty International, Report: *Canada, Stolen Sisters, A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, AMR 20/003/2004. Available at: <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>; IACHR, Notes of Hearing, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 144<sup>o</sup> Period of Sessions, March 28, 2012. The hearing is available at: Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>; BC Ministry of Citizens' Services, *Stopping Violence Against Aboriginal Women: A Summary of Root Causes, Vulnerabilities and Recommendations from Key Literature*, February 23, 2011. Report prepared for the Ministry of Aboriginal Relations and Reconciliation of BC.

<sup>155</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>o</sup> Period of Sessions, March 28, 2012.

<sup>156</sup> House of Commons, Canada. *Standing Committee on the Status of Women, Interim Report Call into the Night: An Overview of Violence Against Aboriginal Women*, March 2011, 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session, page. 4.

<sup>157</sup> House of Commons, Canada. *Standing Committee on the Status of Women, Interim Report Call into the Night: An Overview of Violence Against Aboriginal Women*, March 2011, 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session, page 10.

## 2. The link between discrimination and violence

95. The IACHR recalls the fundamental principles set forth in the Convention of Belém do Pará which provides that “the right of every woman to be free from violence includes the right to be free from all forms of discrimination.”<sup>158</sup> This includes the right to be valued and educated free of stereotyped patterns of behavior and social and cultural practices that are based on concepts of inferiority and subordination.<sup>159</sup> In this regard, the Commission has established a close correlation between the obligation to guarantee equality and non-discrimination, on the one hand, and the prevention of violence against women, on the other.<sup>160</sup> The IACHR has examined which social contexts lend themselves to the commission of violations of women’s rights. In each case, the Commission found that gender-based violence was a manifestation of custom and practice, or evidence of a social structure that relegated women to a position of subordination and inequality and thus left them at a disadvantage.<sup>161</sup>
96. Civil society organizations and indigenous peoples and organizations indicated to the IACHR during its visit to Canada that the high levels of violence against indigenous women and girls and the lack of appropriate response by the authorities are not new phenomena.<sup>162</sup> On the contrary, according to the organizations, “there is a long history of racist treatment of Aboriginal people by police and the justice system in Canada.”<sup>163</sup> In its 2004 report on missing and murdered indigenous women in Canada, Amnesty International made reference to the Manitoba Justice Inquiry findings, indicating that “many police have come to view indigenous people not as a community deserving protection, but a community from which the rest of society must be protected. This has led to a situation often described as one of indigenous people being “over-policed” but “under-protected.”<sup>164</sup>
97. This perception was confirmed during the visit by civil society organizations and indigenous peoples. They described significant distrust by indigenous people of the police. This distrust is attributed in part to the historical role of the police force in removing indigenous children, especially girls, from their homes to take them to residential schools. The IACHR learned that the word used for “police” in Carrier, the language of many indigenous peoples in the north of BC, means “those who take us away.” But the distrust has also resulted from more recent acts of violence allegedly perpetrated by the police against indigenous people, which were left in impunity, as well as the indifference and inaction of authorities toward reports of missing indigenous women or violence against indigenous women. The IACHR was informed that the abuse or disappearance of indigenous women is often treated dismissively by authorities when reported, based on stereotypes that indigenous women are members of a high-risk population and will frequently run away on their own or place themselves in dangerous situations, thus not meriting investigation. In this regard, during the visit, indigenous women

<sup>158</sup> Article 6 of the Convention of Belém do Pará.

<sup>159</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*. OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 60. See also, Article 6 of the Belem do Pará Convention.

<sup>160</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*. OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 60.

<sup>161</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*. OEA/Ser. L/V/II. doc.68, January 20, 2007.

<sup>162</sup> Canadian Feminist Alliance for International Action, *Disappearances and Murders of Aboriginal Women and Girls in Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination, January 2012.

<sup>163</sup> Canadian Feminist Alliance for International Action, *Disappearances and Murders of Aboriginal Women and Girls in Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination, January 2012.

<sup>164</sup> Amnesty International, *Stolen Sisters, A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*. October 2004. This term was constantly used by civil society organizations and families of victims the delegation met during the visit.

indicated to the IACHR the longstanding stereotypes to which they have been subjected. These include notions of indigenous women being dysfunctional, prone to commit crimes, or being drug users. This had a direct impact on the investigation of the cases of missing and murdered indigenous women. These stereotypes are also perpetuated within law enforcement, leading to over-surveillance and the criminal justice system. These stereotypes evidence the underlying structural discrimination that affects indigenous women, and that is being perpetuated.

98. Prevalent discriminatory attitudes – mainly relating to gender and race - contribute to the vulnerability of indigenous women and girls. Sometimes these attitudes motivate acts of violence, either by contributing to stereotyped, discriminatory perceptions that indigenous women are inferior, sexually available and/or easy victims, or by giving the perpetrators confidence that disappearances of indigenous women will not be carefully investigated. Other times these attitudes manifest themselves through the dismissive responses of the police and broader society, and in a failure to provide help when needed, thereby making indigenous women more vulnerable and hence more attractive as potential victims.
99. The Commission has been informed in multiple contexts throughout the Americas about the particular role indigenous women play in their communities; indigenous women are generally recognized as the key to the continuation of their culture, the guarantors of their peoples' survival.<sup>165</sup> Consequently, violence and discrimination against indigenous women is perceived not only an attack on those women individually, but also entails harm to the collective identity of the communities to which they belong. It is therefore understood to constitute spiritual violence.<sup>166</sup> Accordingly, gender based violence is experienced in very particular ways by indigenous women and their communities.
100. These dismissive attitudes both discourage the families of missing women from seeking help and prevent a full investigation into their situation by the relevant authorities. Furthermore, police and other authorities are sometimes the ones perpetrating abuses against these women. In this regard, in 2013 Human Rights Watch released a report documenting abusive policing and failures in protection of indigenous women and girls in Northern British Columbia, one of the two areas where high numbers of missing and murdered women have been reported. The report not only addresses failures in the investigation of cases involving violence against indigenous women but also documents that in many cases the perpetrators are the police. The report also documents the lack of appropriate mechanisms to provide accountability for police misconduct and for failure to protect indigenous women.<sup>167</sup>

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<sup>165</sup> See generally, IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, 18 October 2006; IACHR, Case 12.579, *Valentina Rosendo Cantu* (Mexico), August 2, 2009; IACHR, Case 12.580, *Ines Fernandez Ortega* (Mexico), May 7, 2009.

<sup>166</sup> Consejo de Organizaciones Aborígenas de Jujuy (Argentina), Organización Nacional Indígena de Colombia (ONIC), Coalición de Mujeres Unidas rumbo al Desarrollo (Mexico), Indigenous Women of Quebec (FAQ) (Canada), Clínica Internacional de Defensa de los Derechos humanos de la Universidad de Quebec (Canada), Derechos y Democracia (Canada), Abogadas y Abogados para la Justicia y los Derechos Humanos (Mexico); *Report on Discrimination against Indigenous Women in the Americas*, Public Hearing Before the Commission, March 2012.

<sup>167</sup> Human Rights Watch. *“Those Who Take Us Away”*, February 2013. The title of the report “Those Who Take Us Away” is a literal translation of the word for police in Carrier, the language of many indigenous communities in Northern BC. Available at: <http://www.hrw.org/node/113506/section/1>

101. The IACHR was informed that, in British Columbia in 2006, Judge David Ramsay plead guilty to charges that included sexual assaulting four First Nations girls, who were between 12 and 16 at the time of his attacks, and who had all appeared before him in youth criminal court or family court. The RCMP began their investigation into Judge Ramsay's assaults after a complaint in August 1999<sup>168</sup>. But Judge Ramsay was not removed from the Bench until 2002, three years after the investigation began. According to media reports his assaults continued until 2001.

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<sup>168</sup> Submission of the B.C. CEDAW Group to the UN CEDAW Committee. *Nothing to Report, a Report on Progress in Implementing Priority Recommendations made by the Committee in its 2008 Concluding Observations on Canada*. January 2010; Amnesty International, *Stolen Sisters, A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*. October 2004.



CHAPTER 4

**THE STATE'S**

**INTERNAL OBLIGATIONS**





# THE STATE'S INTERNAL OBLIGATIONS

## A. *The obligations of Canada to protect indigenous peoples and individuals*

### 1. Preliminary considerations

102. Member States of the OAS such as Canada have undertaken to respect and ensure the fundamental rights of all persons subject to their jurisdiction.<sup>169</sup> Respect for human rights is a fundamental principle of the Organization, guiding the actions of each Member state.<sup>170</sup> Pursuant to Article 3(I) of the Charter, “[t]he American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex.” The fundamental rights of man are also referred to in, *inter alia*, the preamble of the Charter; Articles 17, 45, 47 and 49 of the Charter; and those articles of the Charter which address the role of the Commission as the principal organ charged with the promotion and protection of human rights in the hemisphere.<sup>171</sup>
103. The American Declaration of the Rights and Duties of Man recognizes a broad range of fundamental rights including, *inter alia*: life, liberty and security of [the] person (Article I); equality before the law and enjoyment of the rights and duties established in the Declaration without distinction as to race, sex, language, creed or any other factor (Article II); protection of honor, personal reputation, and private and family life (Article V); measures of special protection in the case of children and pregnant and nursing women (Article VII); preservation of health and well-being (Article XI); and resort to the courts to ensure respect for one’s legal rights, together with a simple brief procedure whereby the courts will protect the person concerned from acts of authority that, to their prejudice, violate any fundamental constitutional rights (Article XVIII).
104. According to the well-established and long-standing jurisprudence and practice of the inter-American human rights system, the American Declaration is recognized as constituting a source of legal obligation for OAS Member states, including those States that are not parties to the American Convention on Human Rights.<sup>172</sup> These obligations are considered to flow

<sup>169</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc 40 rev. February 28, 2000.

<sup>170</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc 40 rev. February 28, 2000.

<sup>171</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc 40 rev. February 28, 2000.

<sup>172</sup> See I/A Court H.R., *Advisory Opinion OC-10/89 “Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights”*, July 14, 1989, Ser. A Nº 10 (1989), paras. 35-45; IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 115; *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, 22 September 1987, Annual Report of the IACHR 1986-87, paras. 46-49.

from the human rights obligations of Member states under the OAS Charter.<sup>173</sup> Member states have agreed that the content of the general principles of the OAS Charter is contained in and defined by the American Declaration,<sup>174</sup> as well as the customary legal status of the rights protected under many of the Declaration's core provisions.<sup>175</sup>

105. The inter-American Court and Commission have moreover held that the Declaration is a source of international obligation for all OAS Member states, including those that have ratified the American Convention.<sup>176</sup> The American Declaration is part of the human rights framework established by the OAS Member states, one that refers to the obligations and responsibilities of States and mandates them to refrain from perpetrating, supporting, tolerating or acquiescing in acts or omissions that contravene their human rights commitments.<sup>177</sup>

106. In its observations on this report, the Government indicated the following:

Canada remains dedicated to our human rights commitments, and is proud of our strong record of promoting respect for human rights in the Americas. Canada steadfastly implements the human rights obligations contained in instruments to which it is party, but is not bound by obligations contained in human rights instruments to which it has not consented to be bound. Similarly, jurisprudence is only binding on Canada in those situations where Canada has accepted to be subject to the Court's jurisdiction. Canada has a consistent record of actively engaging with the United Nations and other international treaty bodies and in responding complaints against it pursuant to the international and Inter-American human rights mechanisms to which it is subject. We give serious consideration to the views and recommendations of human rights bodies, but wish to emphasize that they are non-legally binding.<sup>178</sup>

107. The Commission considers that the position indicated by the State fails to take into account its status as a party of the OAS Charter and the attendant obligations in regard to human rights that arise from that commitment. As a source of legal obligation, States must implement the rights established in the American Declaration in practice within their jurisdiction.<sup>179</sup>

<sup>173</sup> Charter of the Organization of American States, Articles 3, 16, and 51.

<sup>174</sup> See e.g. OAS General Assembly Resolution 314, AG/RES. 314 (VII-O/77), June 22, 1977 (entrusting the Inter-American Commission with the preparation of a study to "set forth their obligations to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man"); OAS General Assembly Resolution 371, AG/RES (VIII-O/78), July 1, 1978 (reaffirming its commitment to "promote the observance of the American Declaration of the Rights and Duties of Man"); OAS General Assembly Resolution 370, AG/RES. 370 (VIII-O/78), July 1, 1978 (referring to the "international commitments" of OAS member states to respect the rights recognized in the American Declaration of the Rights and Duties of Man).

<sup>175</sup> IACHR, Report No. 19/02, Case 12.379, *Lare-Reyes et al.* (United States), February 27, 2002, para. 46.

<sup>176</sup> See I/A Court H.R., *Advisory Opinion OC-10/89 "Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights"*, July 14, 1989, Ser. A No. 10 (1989), para. 45 (The Court held that "for the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter"). IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 113.

<sup>177</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 113.

<sup>178</sup> State of Canada, Response to the IACHR's Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>179</sup> See, *as reference*, Statute of the Inter-American Commission on Human Rights (1979), Article 1, providing that the Commission was created "to promote the observance and defense of human rights" and defining human rights as those rights set forth both in the American Declaration and the American Convention. See also, American Convention on Human Rights, Article 29 (d), stating that no provision of the Convention should be interpreted "excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have;" See also, Rules of Procedure of the Inter-American Commission of Human Rights (2009), Articles 51 and 52, empowering the Commission to receive and examine petitions that allege violations of the rights contained in the American Declaration in relation to OAS members states that are not parties to the American Convention.

The Commission has indicated that the obligation to respect and ensure human rights is specifically set forth in certain provisions of the American Declaration.<sup>180</sup> International instruments in general require that State parties not only respect the rights enumerated therein, but also ensure that individuals within their jurisdictions can exercise those rights. The continuum of human rights obligations is not only negative in nature; it also requires positive action from States.<sup>181</sup>

108. Consonant with this principle, the Commission in its decisions has repeatedly interpreted the American Declaration as requiring States to adopt measures to give legal effect to the rights contained in the American Declaration.<sup>182</sup> The Commission has not only required States to refrain from committing human rights violations contrary to the provisions of the American Declaration,<sup>183</sup> but also to adopt affirmative measures to guarantee that the individuals subject to their jurisdiction can exercise and enjoy the rights contained in the American Declaration.<sup>184</sup>
109. Pursuant to general principles of interpretation, other relevant rules of international law applicable to Canada must be taken into account in construing its regional human rights obligations.<sup>185</sup> Consequently, in referring to other norms applicable to Canada where necessary to interpret its obligations under the OAS Charter and American Declaration, the Commission is acting squarely within its mandate. The Commission's long standing practice of invoking other human rights instruments when interpreting and applying the American Declaration and Convention has been affirmed by the Inter-American Court of Human Rights.<sup>186</sup>
110. Furthermore, the international law of human rights is a dynamic body of norms evolving to meet the challenge of ensuring that all persons may fully exercise their fundamental rights and freedoms. In this regard, just as the International Covenants elaborate on the basic principles expressed in the Universal Declaration of Human Rights, so too does the American

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<sup>180</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 117; Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. 22 October 2002, para. 339. The report cites as examples Articles XVIII and XXIV of the American Declaration.

<sup>181</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 117.

<sup>182</sup> IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 162; IACHR Report N° 67/06, Case 12.476, *Oscar Elías Bicot et al.* (Cuba), October 21, 2006, paras. 227-231.

<sup>183</sup> See, e.g., IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 118; IACHR, Report No. 63/08, Case 12.534, *Andrea Mortlock* (United States), July 25, 2008, paras. 75-95; IACHR, Report No. 62/02, Case 12.285, *Michael Domingues* (United States), October 22, 2002, paras. 84-87.

<sup>184</sup> See, e.g., IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 118; IACHR, Report N° 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.* (United States), July 12, 2010 paras. 61-65; IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, paras. 122-135, 162, and 193-196; IACHR, Report N° 75/02, Case 11.140, *Mary and Carrie Dann* (United States), December 27, 2002, paras. 124-145.

<sup>185</sup> See generally, Vienna Convention on the Law of Treaties, Art. 31(3)(c).

<sup>186</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc 40 rev. February 28, 2000, para. 38. In its advisory opinion on "Other Treaties," the Court indicated with approval that:

The Commission has properly invoked in some of its reports and resolutions 'other treaties concerning the protection of human rights in the American states,' regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the inter-American system.

As the Court explained, the "need of the regional system to be complemented by the universal finds expression" in this practice of the Commission, which "is entirely consistent with the object and purpose of the Convention, the American Declaration and the Statute of the Commission." Advisory Opinion OC-1/82 of September 24, 1982, "Other Treaties' Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention), Ser. A No. 1, para. 43 (citing examples under the American Convention and Declaration).

Convention represent, in many instances, an authoritative expression of the fundamental principles set forth in the American Declaration. While the Commission clearly does not apply the American Convention in relation to Member states that have yet to ratify that treaty, its provisions are relevant in informing an interpretation of the principles of the Declaration.<sup>187</sup>

111. In the following section, the IACHR describes some of Canada’s national legal framework regarding the protection of the rights of indigenous peoples in general and indigenous women in particular as well as its international obligations. Understanding Canada’s international obligations will provide a general context that is relevant to understanding the aspects of indigenous identity, its protection, and its impact on indigenous women in Canada.

## 2. National framework

112. According to the UN Special Rapporteur on the Rights of Indigenous Peoples, “Canada’s 1982 Constitution was one of the first in the world to enshrine indigenous peoples’ rights, recognizing and affirming the aboriginal and treaty rights of the Indian, Inuit and Metis people of Canada.”<sup>188</sup> Section 25 of the Canadian Charter of Rights and Freedoms, the bill of rights that forms a part of the Canadian Constitution, specifies that the guarantee of Charter rights “shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada.”<sup>189</sup> This section speaks to the relationship between the Charter and the guarantee of indigenous and treaty rights, which is found outside the Charter itself and elsewhere in the Constitution Act, 1982.<sup>190</sup> Section 25 does not create new rights but is an interpretive provision designed to ensure that the Charter does not affect indigenous rights.
113. Specifically, under Section 25, Charter rights and freedoms may not be construed so as to abrogate or derogate from any indigenous, treaty or other rights or freedoms that pertain to the indigenous peoples of Canada including any rights or freedoms that have been recognized by the Royal Proclamation of 1763 or that exist by way of land claims agreements or may be so acquired.
114. Section 35 states:
- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
  - (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
  - (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.
  - (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.
115. According to the Government of Canada in its submissions to the Commission, Section 35 of the Constitution Act, 1982 protects indigenous and treaty rights, and all levels of government, including federal, provincial, territorial, municipal and indigenous governments, are obliged

<sup>187</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc 40 rev. February 28, 2000, para. 38.

<sup>188</sup> UN, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, *The Situation of indigenous peoples in Canada*, A/HRC/27/52/Add.2, 4 July 2014, para. 6.

<sup>189</sup> Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the “Charter”), s. 25.

<sup>190</sup> (CAN) Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 35.

to respect them.<sup>191</sup> Additionally, any of these levels of government can be held accountable by the courts for failures to respect these rights. According to the State, “indigenous and treaty rights are not universal rights, [r]ather, they are group and site specific. This means that different indigenous peoples will have different rights.”<sup>192</sup>

### 3. International obligation to protect indigenous peoples and individuals

116. For the Inter-American system, the protection and respect of the rights of indigenous peoples is a matter of special importance. In 1972 the IACHR affirmed that for historical reasons, and based on moral and humanitarian principles, States had a sacred duty to provide special protection to indigenous peoples.<sup>193</sup> Since the 1980s the Commission has systematically spoken on the rights of indigenous peoples in special reports; country reports; through the case system in admissibility merits and friendly settlement reports; precautionary measures; and through requests provisional measures filed with the Inter-American Court of Human Rights.
117. The organs of the Inter-American system for the protection of human rights have developed jurisprudence that recognizes the collective rights of indigenous peoples. Throughout, the Commission has insisted on the need for special protection for the right of indigenous peoples to their lands and resources, because the full exercise of that right not only implies the protection of an economic unit, but also the protection of the human rights of a community whose economic, social, spiritual, and cultural development is based on its relationship to the land.<sup>194</sup> The Inter-American System has indicated that the wretched living conditions that members of an indigenous community may experience and their general situation of abandonment give rise to a suffering that amounts to a violation of their mental and moral integrity.<sup>195</sup> In addition, the failure of a State to take required positive measures, within its powers, that could reasonably be expected to prevent or to avoid the risk to the right to life of an indigenous person can amount to a violation of the right to life.<sup>196</sup>
118. The Commission has also given special attention to the right of indigenous peoples to judicial protection and guarantees under the American Declaration. Effective access to such protection is especially important given the context of historical, structural discrimination. Further, it is essential that such protection be available in consonance with indigenous peoples’ culture and traditions, and provided in a way that ensures against discrimination.

<sup>191</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 30.

<sup>192</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 30.

<sup>193</sup> IACHR, *Resolution on Special Protection for Indigenous Populations: Action to combat racism and racial discrimination*. Cited in: IACHR, *Yanomami Case*, Report 12/85, Annual Report 1984-1985, para. 8. IACHR, Report No. 75/02, Case 11.140, *Mary and Carrie Dann* (United States), December 27, 2002, par. 126. IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District* (Belize), October 12, 2004, par. 96.

<sup>194</sup> Article XXIII of the American Declaration protects the right to private property, and the IACHR has interpreted this article so as to protect the property rights of indigenous and tribal peoples to their lands, territories, and natural resources. This right includes “precepts on the protection of indigenous and tribal peoples’ traditional forms of ownership and cultural survival and on their right to lands, territories and natural resources.” The Commission considers that the protection of their lands, territories, and natural resources is fundamental for the physical and cultural survival of indigenous peoples. IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras 5 and 9.

<sup>195</sup> I/A Court HR, *Case of the Xamok Kasek Indigenous Community v Paraguay*, Judgement of August 24, 2010, para. 244.

<sup>196</sup> I/A Court HR, *Case of the Xamok Kasek Indigenous Community v Paraguay*, Judgement of August 24, 2010, para. 234.

119. Some treaties in the United Nations system contain provisions relevant to the rights of indigenous peoples. The United Nations Charter, for example, recognizes the principle of the self-determination of peoples.<sup>197</sup> The Human Rights Committee has stated that the right to self-determination “is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.”<sup>198</sup> In addition, the Universal Declaration of Human Rights recognizes a broad array of human rights, including the right to property, both individual and collective (Article 17), and social, economic and cultural rights.<sup>199</sup>
120. Canada has ratified the major United Nations human rights treaties. UN instruments that Canada has ratified include: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol and the Second Optional Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention Against Torture, the Convention for the Elimination of Racial Discrimination, the Convention on the Rights of the Child and the Optional Protocols and the Convention on the Rights of Persons with Disabilities.<sup>200</sup>
121. On September 13, 2007, the United Nations General Assembly approved the UN Declaration on the Rights of Indigenous Peoples.<sup>201</sup> The UN Declaration of the Rights of Indigenous Peoples recognizes a wide array of human rights and fundamental freedoms of indigenous

<sup>197</sup> United Nations Charter, signed June 26, 1945 at the United Nations Conference on International Organization, which entered into force on October 24, 1945, Article 1(2).

<sup>198</sup> General Comment No. 12, General Comments adopted by the Human Rights Committee, Article 1 – Right to self-determination, 21<sup>st</sup> session, U.N. Doc. HRI/GEN/1/Rev.7 at 152 (1984). The Human Rights Committee has indicated that the right to self-determination “applies to all peoples and not merely to colonized peoples.” Concluding observations of the Human Rights Committee: Azerbaijan, adopted August 3, 1994. CCPR/C/79/Add.38; A/49/40, para. 296. The Inter-American Court of Human Rights has indicated that “under Article 1 common to both agreements, indigenous peoples may ‘pursue their economic, social and cultural development’ and ‘freely dispose of their natural wealth and resources’ so that they are not ‘deprived of their own means of subsistence.’” I/A Court HR. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 171, n. 223. The Inter-American Commission has also stated that the right to self-determination is applicable to indigenous peoples. IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 166. In addition, some academics hold that common Article 1 of the two covenants recognizes that indigenous peoples have the right to self-determination. See Antonio Cassese, SELF-DETERMINATION OF PEOPLES 55-57 (1995). Both the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) recognize the right to self-determination. International Covenant on Civil and Political Rights [ICCPR], Article 1, adopted by the General Assembly in resolution 2200 A (XXI), December 16, 1966, came into force: March 23, 1976; International Covenant on Economic, Social and Cultural Rights [ICESCR], Article 1, adopted by the General Assembly in resolution 2200 A (XXI), December 16, 1966, came into force: January 3, 1976.

<sup>199</sup> Universal Declaration of Human Rights, adopted by the General Assembly December 10 1948, 117<sup>th</sup> plenary session, AG/RES/217A(III).

<sup>200</sup> Government of Canada, Foreign Affairs, Trade and Development Canada, *Canada’s International Human Rights Policy*. Available at: <http://www.international.gc.ca/rights-droits/policy-politique.aspx>

<sup>201</sup> United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, adopted by the General Assembly at its 107<sup>th</sup> plenary session, September 13, 2007. The Declaration was approved with 144 votes in favor, 4 votes against, and 11 abstentions. Of the OAS member states, the United States and Canada voted against it, and Colombia abstained. After its adoption, on November 13, 2010, the Government of Canada stated its support for the Declaration, and the President of the United States declared that the United States would sign it. Second White House Tribal Nations Conference, December 16, 2010, see: [http://www.whitehouse.gov/sites/default/files/Tribal\\_Nations\\_Conference\\_Final\\_0.pdf](http://www.whitehouse.gov/sites/default/files/Tribal_Nations_Conference_Final_0.pdf). In addition, on April 29, 2009, Colombia declared its support of the Declaration. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia. Summary of the report and recommendations of the mission by the Permanent Forum to Colombia*, Doc. E/C.19/2011/3, February 11, 2011, para. 5.

peoples. These include: the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law; the right to be free and equal to other peoples and individuals; and the right to be free from any kind of discrimination, in particular based on their indigenous origin or identity.

122. The UN Declaration on the Rights of Indigenous Peoples recognizes the right to life, physical and mental integrity, liberty, and security of the person. Also, indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. The Declaration reiterates the collective right of indigenous peoples to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.<sup>202</sup> In addition, “[i]ndigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”<sup>203</sup> The right not to be subject to forced assimilation is accompanied by the obligation of States to prevent such assimilation. In its response to the IACHR Report, Canada indicated that, while the UN Declaration on the Rights of Indigenous Peoples is not legally binding and does not reflect customary international law or change Canadian laws, the Government of Canada “supports the Declaration within the framework of Canada’s Constitution and laws.”<sup>204</sup> It also stated that, through its November 2010 endorsement of the Declaration, Canada “reiterated its commitment to continue working in partnership with Aboriginal peoples in creating a better Canada.”<sup>205</sup>

## ***B. The obligation to guarantee women’s rights to equality, non-discrimination, and non-violence***

### **1. National framework**

123. In Canada, the Canadian Charter of Rights and Freedoms guarantees all individuals in the country freedom of conscience and religion, freedom of thought, belief, opinion and expression, including freedom of the press, freedom of peaceful assembly and freedom of association.<sup>206</sup> The right to equality is protected under the Charter and the various federal, provincial and territorial human rights statutes.<sup>207</sup> Section 15 of the Charter ensures equal protection and equal benefit of the law for all Canadians without discrimination.<sup>208</sup>

<sup>202</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 7(2). In some countries the peoples in voluntary isolation are called “free peoples” (*pueblos libres*), since they have not submitted to the conventions of the majority society.

<sup>203</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 8(1).

<sup>204</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>205</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>206</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 9.

<sup>207</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 10.

<sup>208</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 11.



124. “Every individual is equal before the law and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.”<sup>209</sup>
125. From the outset, Section 15 of the Canadian Charter has been understood to embody a guarantee of substantive equality. Equality is not merely measured by whether those who are similarly situated receive similar treatment. The Canadian courts have held that true equality, which considers not only the intent but also the results of the law’s application, may require different treatment for those differently situated in order to correct or ameliorate an existing inequality.<sup>210</sup> A violation of equality rights need not be intentional;<sup>211</sup> it can arise through the unintended adverse effects of a provision, omission or action on a group. The identification of such adverse effects does not require a complete correspondence between the adverse effects and the group in question, but simply a significantly disproportionate effect.<sup>212</sup> An assertion of disproportionate costs borne by a particular group must be assessed carefully against the evidentiary record.<sup>213</sup>
126. Discrimination under the Charter’s equality provision includes discrimination against an individual on the basis of certain group memberships.<sup>214</sup> Section 15 constitutionally protects equality in both content and application of the law.<sup>215</sup>
127. Distinctions in treatment are permitted under the Charter for the purpose of implementing affirmative action programs. Section 15(2) provides that the equality rights entrenched under Section 15(1) do not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, although in practice, the Canadian courts have upheld the constitutionality of affirmative action programs under Section 15(1), ruling that such programs are not discriminatory as that term is understood in equality jurisprudence.<sup>216</sup>
128. In addition to the Section 15 equality provision, the Charter contains two additional equality provisions that state that the Charter is to be interpreted in a manner that is consistent with the preservation and enhancement of the multicultural heritage of Canadians<sup>217</sup> and that the

<sup>209</sup> Section 15(1) of the Canadian Charter of Rights and Freedoms.

<sup>210</sup> *R. v. Big M Drug Mart Ltd.*, [1985] S.C.J. No. 17, [1985] 1 S.C.R. 295 at 347 (S.C.C.); *Law Society of British Columbia v. Andrews*, [1989] S.C.J. No. 6, [1989] 1 S.C.R. 143 at 165, 168 (S.C.C.).

<sup>211</sup> *Eldridge v. British Columbia (Attorney General)*, [1997] S.C.J. No. 86, [1997] 3 S.C.R. 624 (S.C.C.).

<sup>212</sup> *Symes v. Canada*, [1993] S.C.J. No. 131, [1993] 4 S.C.R. 695 at 770-71 (S.C.C.).

<sup>213</sup> *Symes v. Canada*, [1993] S.C.J. No. 131, [1993] 4 S.C.R. 695 (S.C.C.).

<sup>214</sup> The word “group” is not expressly included under s. 15(1). However, the discrimination analysis applied by the Supreme Court of Canada applies to an individual’s membership in a disadvantaged group. See the leading Supreme Court of Canada decision of *Law v. Canada (Minister of Employment and Immigration)*, [1999] S.C.J. No. 12, [1999] 1 S.C.R. 497 at para. 63 (S.C.C.). See also the Supreme Court’s initial analytical framework set out in *Law Society of British Columbia v. Andrews*, [1989] S.C.J. No. 6, [1989] 1 S.C.R. 143 at para. 37 (S.C.C.).

<sup>215</sup> *R. v. Turpin*, [1989] S.C.J. No. 47, [1989] 1 S.C.R. 1296 at 1330 (S.C.C.).

<sup>216</sup> *Lovelace v. Ontario*, [2000] S.C.J. No. 36, [2000] 1 S.C.R. 950 at para. 93 (S.C.C.).

<sup>217</sup> Canadian Charter of Rights and Freedoms, s. 27, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11. For judicial consideration of s. 27 of the Charter, see *Saleh v. Reichert*, [1993] O.J. No. 1394, 104 D.L.R. (4th) 384 (Ont. Gen. Div.), where it was held that the emphasis on multiculturalism under s. 27 does not mean the Charter applies to litigation between private parties in the absence of government action; *Prus-Czarnecka (Next friend of) v. Alberta*, [2003] A.J. No. 1026, 228 D.L.R. (4th) 760 (Alta. Q.B.), where it was held that the (AB) Vital Statistics Act, R.S.A. 2000, c. V-4 should be interpreted in accordance with the principles of multiculturalism to allow the registration of a female child’s name to take the form of a feminine version of the father’s surname where a particular culture so required.

Charter's rights and freedoms are guaranteed equally to male and female persons.<sup>218</sup> Both Section 15 and Section 28 apply to government action in the form of legislation, regulations, directions, policies, programs, activities and the actions of governments agents carried out under lawful authority.<sup>219</sup>

129. As described above, the situation of missing and murdered indigenous women in Canada is a consequence of the historical treatment of indigenous peoples under the law and a context of past discrimination that continues to affect them. Despite the current national framework regarding equality and non-discrimination, the legacy of historical discrimination, including the Residential Schools and the Indian Act, is an important factor in understanding the persistence of unequal treatment and stereotyping of indigenous women, which in turn continue to place indigenous women at an increased risk for multiple forms of violence.

## 2. International obligations to guarantee women's rights to equality, non-discrimination, and non-violence

130. The Commission has repeatedly established that the right to equality and non-discrimination contained in Article II of the American Declaration is a fundamental principle of the inter-American system of human rights.<sup>220</sup> It provides that "all persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." The principle of non-discrimination is the backbone of the universal and regional human rights systems.<sup>221</sup>
131. As with all fundamental rights and freedoms, the Commission has observed that States are not only obligated to provide for equal protection of the law,<sup>222</sup> they must also adopt the legislative, policy and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration.<sup>223</sup>

<sup>218</sup> Canadian Charter of Rights and Freedoms, s. 28, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11. For judicial consideration of s. 28 of the Charter, see *Blainey v. Ontario Hockey Assn.*, [1985] O.J. No. 2645, 21 D.L.R. (4th) 599 (Ont. H.C.J.), *revd on other grounds* [1986] O.J. No. 236, 54 O.R. (2d) 513 (Ont. C.A.), leave to appeal refused [1986] 1 S.C.R. xii (S.C.C.), where the court held that s. 28 was enacted merely to emphasize the equality of sexes protected under s. 15 and elsewhere in the Charter; the provision was not meant to override other provisions of the Charter; *Shewchuk v. Ricard*, [1986] B.C.J. No. 335, 28 D.L.R. (4th) 429 (B.C.C.A.), leave to appeal refused (1987), 76 N.R. 398 n (S.C.C.), where it was held that s. 28 provides emphasis on and assurance that rights and freedoms under the Charter are granted equally to both sexes; the section does not afford a greater protection to discrimination on the basis of sex than to other grounds of discrimination; *Weatherall v. Canada (Attorney General)*, [1987] F.C.J. No. 519, [1988] 1 F.C. 369 (F.C.T.D.), *revd on other grounds* [1990] F.C.J. No. 628, 73 D.L.R. (4th) 57 (F.C.A.), where it was held that the impact of s. 28 is of no significance where a violation has already been identified under another Charter provision, such as s. 15; rather, the section may be used meaningfully, for instance, to prevent the imposition of a limitation on the rights of men alone under s. 1.

<sup>219</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012.

<sup>220</sup> See, IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 107. IACHR, Report 40/04, Case 12.053, *Maya Indigenous Community (Belize)*, October 12, 2004, para. 163; IACHR, Report 67/06, Case 12.476, *Oscar Elías Bicer et al.* (Cuba), October 21, 2006, para. 228; IACHR, *Report on Terrorism and Human Rights*, Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., 22 October 2002, para. 335.

<sup>221</sup> See, e.g., International Covenant on Civil and Political Rights (Articles 2 and 26); International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3); European Convention on Human Rights (Article 14); African Charter on Human and People's Rights (Article 2).

<sup>222</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 108. IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community (Belize)*, October 12, 2004, para. 162.

<sup>223</sup> IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community (Belize)*, October 12, 2004, para. 162.

132. International law protects the right to equality before the law. Moreover, in cases of structural discrimination, the law may necessarily include specific protections aimed at responding to this problem. In practice this means that States have the obligation to adopt the measures necessary to recognize and guarantee the effective equality of all persons before the law; to abstain from introducing in their legal framework regulations that are discriminatory towards certain groups either on their face or in practice; and to combat discriminatory practices.<sup>224</sup> The Commission has underscored that laws and policies should be examined to ensure that they comply with the principles of equality and non-discrimination. This analysis should assess the potential discriminatory impact of the laws and policies that are under examination, even when their formulation or wording appears neutral and their text does not overtly provide for discriminatory application.<sup>225</sup>
133. The obligations established in Article II extend to the prevention and eradication of violence against women. This is a crucial component of the State's duty to eliminate discrimination.<sup>226</sup> Article VII of the American Declaration contains a principle of special protection for women and for girls by establishing that "all women, during pregnancy and the nursing period, and all children, have the right to special protection, care and aid."
134. Under international instruments providing regional and universal protection for human rights, all women have the right to be treated with the same respect, dignity and responsibility as men, without discrimination.<sup>227</sup>
135. The inter-American system has consistently highlighted the strong connection between the problems of discrimination and violence against women.<sup>228</sup> In the case of *María Eugenia Morales de Sierra* the IACHR expressed its concern over the serious consequences of discrimination against women and the stereotyped notions of their roles; it also made reference to how discrimination, subordination and violence are interrelated.<sup>229</sup> The IACHR observed that the traditional attitudes that regard women as subordinate to men, or lock them into stereotyped roles, serve to perpetuate widespread practices involving violence or coercion, such as family violence and abuse.<sup>230</sup> Thus, violence against women is a form of discrimination that

<sup>224</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 109; IACHR, Report No. 67/06, Case 12.476, *Oscar Elías Bicer et al.* (Cuba), October 21, 2006, paras. 228-231; IACHR Report No. 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, paras. 162 and 166.

<sup>225</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 107; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 90.

<sup>226</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 120.

<sup>227</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides that discrimination against women is defined as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." United Nations, Convention on the Elimination of All Forms of Discrimination against Women. Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

<sup>228</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 110. See generally, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others*, (Mexico), March 9, 2007; IACHR, Report No. 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. C.H.R., OEA/Ser.L/V/II, Doc. 68 (January 20, 2007); I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009.

<sup>229</sup> IACHR, Report on Merits No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

<sup>230</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, Section I, Introduction, *Obstacles women encounter when seeking redress for acts of violence: An analysis of the present situation*, para. 65.

seriously impairs women's ability to exercise and enjoy their rights and freedoms on an equal footing with men.<sup>231</sup>

136. Furthermore, the IACHR has previously maintained that while formal legal equality does not guarantee the elimination of instances of discrimination in practice, the recognition of formal legal equality makes it possible to encourage transformations in society that reinforce respect for legal equality.<sup>232</sup> The commitment to equality must not be limited to achieving legal equality, but must also encompass all social institutions, such as the family, the market, and political institutions.<sup>233</sup> Women's equality must also be examined in the light of the circumstances in which they live, including the family, the community and the cultural context.<sup>234</sup>
137. In its report entitled *Access to Justice for Women Victims of Violence in the Americas*, the IACHR emphasized that the inter-American system is necessarily working toward a concept of material or structural equality based on the recognition that special equalizing measures must be adopted for certain sectors of the population. This demands different treatment when, due to circumstances affecting a disadvantaged group, equal treatment would limit or encumber access to a service or good, or the exercise of a right.<sup>235</sup> In this regard, the UN Special Rapporteur on Violence against Women its causes and consequences has affirmed that structural and institutional inequalities are the result of various aspects and factors related to discrimination.<sup>236</sup>
138. Gender-based violence is one of the most extreme and pervasive forms of discrimination, severely impairing and nullifying the enjoyment of women's rights.<sup>237</sup> In its 2003 report on violence against women in Ciudad Juarez, which is the first study in which the Commission probed more deeply into the important correlation between gender-based violence and discrimination, the IACHR concluded that gender-based discrimination was one of the factors that explained why so little was being done to stop the murders of women in Ciudad Juarez and punish the perpetrators. The report highlighted the link between women's subordination and violence against women.<sup>238</sup>

<sup>231</sup> See, IACHR, Report No. No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, Section I, Introduction, *Obstacles women encounter when seeking redress for acts of violence: An analysis of the present situation*, para. 65.

<sup>232</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100 Doc. 17, 13 October 1998, chapter IV.

<sup>233</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, 20 January 2007, para. 97.

<sup>234</sup> IACHR, *Report on Access to maternal health services from a human rights perspective*, OEA/Ser.L/V/II. Doc. 69, 7 June 2010, para. 64.

<sup>235</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, 20 January 2007, para. 99.

<sup>236</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 67.

<sup>237</sup> According to the Committee on the Elimination of All Forms of Discrimination against Women, the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, and coercion and other deprivations of liberty. CEDAW Committee, *General Recommendation 19: Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc.A/47/38 at 1 (1993). See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010; United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994; United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

<sup>238</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 7.

139. Specifically, the IACHR stressed that discrimination against women was a root cause of both the violence itself and the non-responsiveness to that violence. In order to address the discrimination that underlies both violence against women and the failure to investigate and prosecute it, the IACHR stated that the resolution of the killings in Ciudad Juárez required attention to the root causes of violence against women – in all of its principal manifestations.<sup>239</sup> In the same vein, in a 2011 report entitled *Violence against Women: Its Causes and Consequences*, the UN Special Rapporteur on Violence against Women, its causes and consequences stated that “violence against women is not the root problem in most societies, violence against women occurs because other forms of discrimination are allowed to flourish.”<sup>240</sup>
140. According to the UN Special Rapporteur on Violence against Women, its causes and consequences: “power imbalances and structural inequality between men and women are among the root causes of violence against women”<sup>241</sup> and “this makes violence against women a matter of inter-gender inequality between women and men.”<sup>242</sup> Additionally, the UN Rapporteur has indicated, following other UN resolutions, that discrimination is understood as having multiple forms that combine to heighten the vulnerability to violence of certain women and girls relative to the rest of the female population, and this is a reflection that discrimination against women is also a matter of intra-gender equality among women.<sup>243</sup>
141. Addressing violence against women is not sufficient unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed, including inter- and intra- gender disparity of impacts. The UN Special Rapporteur on Violence against Women, its causes and consequences has expressed that interpersonal, institutional and structural forms of violence perpetuate gender inequalities, but also racial hierarchies, ethnic group exclusionary practices and allocations of resources that benefit some groups of women at the expense of others. She also stated that “interventions that seek only to ameliorate the abuse and which do not factor in women’s realities are not challenging the fundamental gender inequalities and discrimination that contribute to the abuse in the first place.”<sup>244</sup>
142. In this regard, the Commission has consistently recognized that certain groups of women face discrimination on the basis of more than one factor during their lifetime, such as their young age, race, and ethnic origin, and that this multi-faceted discrimination increases their exposure to acts of violence.<sup>245</sup> More specifically, the IACHR has stated that indigenous

<sup>239</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 11.

<sup>240</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 65.

<sup>241</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 16.

<sup>242</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 16.

<sup>243</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 16.

<sup>244</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 31.

<sup>245</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 113; IACHR, Report Nº 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007, paras. 251-252; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paras. 195-197; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, paras. 102-106; IACHR, *Report on the Rights of Women in Haiti to be Free from Violence and Discrimination*, OEA/Ser.L/V/II, Doc. 64, March 10, 2009, para. 90.

women are often victims of multiple form of discrimination on the basis of their race, ethnic background and their status of women.<sup>246</sup> They face two layers of discrimination as from the time they are born: first as members of their racial and ethnic group and second on the basis of their sex.<sup>247</sup> For her part, the UN Special Rapporteur on Violence against Women, its causes and consequences has indicated that discrimination based on race, ethnicity, national origin, ability, socio-economic class, social orientation, gender identity, religion, culture, tradition and other realities often intensify acts of violence against women.<sup>248</sup>

143. In its 2004 Report, Amnesty International described the multiple forms of discrimination faced by indigenous women in Canada based on their sex and race:

At the heart of the various human rights concerns documented in this report is discrimination. Amnesty International's research has found that Indigenous women in Canada face discrimination because of their gender and because of their Indigenous identity. The research highlights that this is compounded by further discriminatory treatment that women face due to poverty, ill-health or involvement in the sex trade.<sup>249</sup>

144. The Canadian Panel on Violence Against Women has stated that:

Racism is a major contributing factor in the continuing violence, oppression and systemic abuse that confronts Aboriginal women in Canadian society today.<sup>250</sup>

145. The situation of violence against indigenous women exemplifies the intersectionality between violence against women and discrimination on the basis of race and ethnicity.<sup>251</sup> Racism exacerbates discrimination against indigenous women. In Durban in 2001 the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance expressed that "racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights."<sup>252</sup>

146. The CEDAW Committee has stated in this regard that:

Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identify, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to

<sup>246</sup> See, IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II, doc. 67, 18 October 2006, para. 12.

<sup>247</sup> See, IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II, doc. 67, 18 October 2006.

<sup>248</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 67.

<sup>249</sup> Amnesty International, Canada: *Stolen Sisters: A Human Response to Discrimination and Violence against Indigenous Women in Canada*, 4 October 2004.

<sup>250</sup> Canadian Panel on Violence against Women, *Aboriginal Women: From the Final Report of the Canadian Penal on Violence Against women*. (Ottawa: Ministry of Supply and Services Canada, 1996).

<sup>251</sup> United Nations, *Report of the Special Rapporteur on violence against women, Rashida Manjoo, on the expert group meeting on gender-motivated killings of women*, A/HRC/20/16/Add. 4, 16 May 2012, para. 21.

<sup>252</sup> World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration, 2001, para. 69.

a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.<sup>253</sup>

147. Indigenous women experience institutional and structural inequalities because of the entrenched historical discrimination and inequalities that continue to be experienced by them. This aggravates the violence to which they are subjected.<sup>254</sup> In addition, the IACHR stresses that violence against indigenous women has an individual and collective dimension. It constitutes an offense to a woman's dignity and an offense to the culture of the community to which the woman belongs.
148. The UN Special Rapporteur on Violence Against Women, its causes and consequences has stressed that the elimination of violence requires holistic measures that address both inter-gender and intra-gender inequality and discrimination:

The holistic approach requires rights to be treated as universal, interdependent and indivisible; situating violence on a continuum that spans interpersonal and structural violence; accounting for both individual and structural discrimination, including structural and institutional inequalities; and analyzing social and/or economic hierarchies among women, and between women and men, i.e. both intra- and inter-gender.<sup>255</sup>

Adopting a holistic model with regards to gender-based violence requires a complex understanding of the ways in which intra-and inter-gender differences exist and the ways in which institutional and structural inequalities exacerbate violence through multiple and intersecting forms of discrimination.<sup>256</sup>

149. A comprehensive holistic approach applied to violence against indigenous women means addressing the past and present institutional and structural inequalities confronted by these women. Elements that ought to be addressed include the dispossession of their land, as well as historical laws and policies that negatively affected indigenous women, put them in an unequal situation, and prevented their full enjoyment of civil, political, economic, social and cultural rights.
150. Several UN bodies have stressed that women's empowerment, including women's economic empowerment, full and equal access to resources, integration into the formal economy, and full participation at all levels of public, political, and cultural life, are essential to addressing the underlying causes of violence against women, including sexual violence.<sup>257</sup> Recently, in the Vienna +20 Declaration, it was established that "the intersection of gender based discrimination, poverty, socio-economic marginalization and violence must be addressed by States."<sup>258</sup>

<sup>253</sup> United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, Temporary Special Measures*, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (2004), section II, para. 12.

<sup>254</sup> United Nations, The Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20*, E/C.12/GC/20, 2 July 2009.

<sup>255</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 20.

<sup>256</sup> United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/17/26, 2 May 2011, para. 70.

<sup>257</sup> United Nations, General Assembly, Resolution adopted by the Human Rights Council 23<sup>rd</sup> Session, *Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence*, A/HRC/RES/23/25, 25 June 2013.

<sup>258</sup> The Vienna +20 CSO Declaration, adopted in Vienna on June 26, 2013, para. 8

151. In this regard, the UN Declaration on the Rights of Indigenous Peoples established the need to pay particular attention to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities in its implementation. It also stated that States should adopt measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection of guarantees against all forms of violence and discrimination.<sup>259</sup>
152. In the following section, having described above the international standards that exist to protect the rights of indigenous women, the IACHR will analyze more specifically Canada's due diligence obligation regarding the violation of the indigenous rights of missing and murdered indigenous women.

### C. *The due diligence obligation*

153. The inter-American human rights system has affirmed the States' obligation to act with due diligence in response to human rights violations.<sup>260</sup> This duty involves four obligations: the obligation to prevent, the obligation to investigate, the obligation to punish, and the obligation to make reparations for human rights violations:<sup>261</sup>

This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>262</sup>

154. The Commission notes that the principle of due diligence has a long history in the international legal system and its standards and jurisprudence concerning State responsibility. The due diligence principle has been applied in a range of circumstances to mandate States to prevent, punish, and provide remedies for acts of violence. The principle applies when such acts of violence are committed by States and, under some circumstances, by non-State actors.<sup>263</sup>
155. Violence perpetrated or condoned by the State may include gender-based violence against women who are indigenous or members of minority groups.<sup>264</sup> There is a broad international

<sup>259</sup> Article 22 of the UN Declaration on the Rights of Indigenous Peoples.

<sup>260</sup> See I/A Court H.R., *Case Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, para. 172.

<sup>261</sup> See I/A Court H.R., *Case Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, para. 172.

<sup>262</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, para. 166.

<sup>263</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 122. For a more detailed discussion, see generally J. Hessbruegge. 2004. "The Historical development of the doctrines of attribution and due diligence in international law", *New York University Journal of International Law*, vol. 36; Robert P. Barnidge, Jr., *The Due Diligence Principle under International Law*, *International Community Law Review* (2006); Johanna Bourke-Martignoni, *The History and Development of the Due Diligence Standard in International Law and its Role in the Protection of Women against Violence*, *Due Diligence and its Application to Protect Women from Violence* (2008); Report from Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, E/CN.4/2006/61; Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, 14 May 2013.

<sup>264</sup> General Assembly, *Report on the advancement of women of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, transmitted by the Secretary General to the General Assembly. A/66/215, 1 August 2011, para. 39.



consensus over the use of the due diligence principle to interpret the content of State legal obligations towards the problem of violence against women.<sup>265</sup> This consensus is a reflection of the international community's growing recognition of violence against women as a human rights problem requiring State action across a range of fronts.<sup>266</sup>

156. This consensus has found expression in a diversity of international instruments, including UN General Assembly resolutions adopted by consensus,<sup>267</sup> broadly-approved declarations and platforms,<sup>268</sup> treaties,<sup>269</sup> views from treaty bodies,<sup>270</sup> custom,<sup>271</sup> jurisprudence from the universal and regional systems,<sup>272</sup> and other sources of international law.<sup>273</sup> For example, the United Nations Human Rights Council has underscored that States must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls, and that the failure to do so “violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.”<sup>274</sup>
157. The international community has consistently referenced the due diligence standard as a way of understanding what States' human rights obligations mean in practice when it comes to violence perpetrated against women of varying ages and in different contexts. This principle has also been crucial in defining the circumstances under which a State may be obligated to prevent and respond to the acts or omissions of private actors. This duty encompasses the organization of the entire state structure – including the State's legislative framework, public policies, law enforcement machinery and judicial system – to adequately and effectively prevent and respond to these problems.<sup>275</sup> The Inter-American Commission has invoked the

<sup>265</sup> See e.g. *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/23/49, 14 May 2013.

<sup>266</sup> See, e.g., *Vienna Declaration and Programme of Action*, A/CONF.157/23, 12 July 1993, paras. 18 and 38.

<sup>267</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010 (adopted without a vote); United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/64/137, 11 February 2010 (adopted without a vote); United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994 (adopted without a vote). See also, *Elimination of Domestic Violence against Women*, G.A. Res. 58/147, U.N. GAOR, 58<sup>th</sup> Sess., U.N. Doc. A/Res/58/147 (February 19, 2004) (adopted without a vote).

<sup>268</sup> See, e.g., United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), paras. 112-126.

<sup>269</sup> See, e.g., Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”), Article 7(b).

<sup>270</sup> See, e.g., United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 19, Violence against women*, U.N. Doc. HRI/GEN/1//Rev.1 (1994), para. 11.

<sup>271</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, Commission on Human Rights, Sixty-second session, E/CN.4/2006/61, January 20, 2006, para. 29 (The United Nations Special Rapporteur on Violence against Women therein established that the duty of due diligence has attained the status of a norm of customary international law, which obligates States to prevent and respond with due diligence to acts of violence against women).

<sup>272</sup> See, e.g., European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 246; Committee on the Elimination of Discrimination against Women, Views on Communication No. 6/2005, *Fatma Yildirim v. Austria*, July 21, 2004, para. 12.1.1; Committee on the Elimination of Discrimination against Women, Views on Communication No. No. 2/2003, *A.T. v. Hungary*, January 26, 2003, para. 9.2.

<sup>273</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 124.

<sup>274</sup> United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010.

<sup>275</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and*

due diligence principle as a benchmark to rule on cases and situations of violence against women perpetrated by private actors, including those pertaining to girls.<sup>276</sup>

158. The evolving law and practice related to the application of the due diligence standard in cases of violence against women highlights in particular four principles. First, international bodies have consistently established that a State may incur an international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women, a duty which may apply to actions committed by private actors in certain circumstances.<sup>277</sup> Second, they underscore the link between discrimination, violence against women and due diligence, highlighting that the States' duty to address violence against women also involves measures to prevent and respond to the discrimination that perpetuates this problem.<sup>278</sup> States must adopt the required measures to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.
159. Third, they emphasize the link between the duty to act with due diligence and the obligation of States to guarantee access to adequate and effective judicial remedies for victims and their

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other forms of sexual violence, A/HRC/RES/23/25, 25 June 2013; United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010, paras. 1-16; United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, Article 4; United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, January 30, 2009, paras. 8-16; CEDAW, General Recommendation 19: *Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc.A/47/38 at 1 (1993), paras. 1-23.

See also, IACHR, Report 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others*, March 9, 2007; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009.

For references to the European and African systems of human rights see, European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003, Article 4.

<sup>276</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 125. See, e.g., IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 160-255; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), April 16, 2001, paras. 55-58; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paras. 26-58; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 104; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. 124/Doc.6, October 18, 2006, para. 24; IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134, Doc. 63, March 10, 2009, para. 44; IACHR, *Report on the Rights of Women in Haiti to be Free from Violence and Discrimination*, OEA/Ser.L/V/II, Doc. 64, March 10, 2009, para. 80. See also generally, I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

<sup>277</sup> See generally, IACHR, Case 12.551, *Paloma Angelica Escobar Ledezma et al* (Mexico) Publication; IACHR, Case 12.578, *Maria Isabel Veliz Franco et al.* (Guatemala), May 3, 2012; IACHR, Case 12.579, *Valentina Ronsendo Cantu* (Mexico), August 2, 2009; IACHR, Case 12.580, *Ines Fernandez Ortega* (Mexico), May 7, 2009; IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007; European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; CEDAW Committee, Views on Communication 6/2005, *Fatma Yildirim v. Austria* (July 21, 2004).

<sup>278</sup> See, e.g., United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, articles 3 and 4; United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 19, *Violence against women*, U.N. Doc. HRI/GEN/1//Rev.1 (1994), paras. 1, 11, and 23; IACHR, Report N° 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44; IACHR, Case 12.551, *Paloma Angelica Escobar Ledezma et al* (Mexico) Publication; IACHR, Case 12.578, *Maria Isabel Veliz Franco et al.* (Guatemala), May 3, 2012.

family members when they suffer acts of violence.<sup>279</sup> Fourth, the international and regional systems have identified certain groups of women as being at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, among these girls, and women belonging to ethnic, racial, and minority groups. This must be considered by States in the adoption of measures to prevent all forms of violence.<sup>280</sup>

160. The protection of the right to life is a critical component of a State's due diligence obligation to protect women from acts of violence. This legal obligation pertains to the entire state institution, including the actions of those entrusted with safeguarding security, such as the police forces.<sup>281</sup> It also extends to the obligations a State may have to prevent and respond to the actions of non-state actors and private persons.<sup>282</sup>
161. The duty of protection related to the right to life is considered especially rigorous in the case of girls.<sup>283</sup> This stems, on the one hand, from the broadly-recognized international obligation to provide special protection to children, due to their stage of physical and emotional development.<sup>284</sup> On the other, it is linked to the international recognition that the due diligence obligation of States to protect and prevent violence has special connotations in the case of women, due to the historical discrimination they have faced as a group.<sup>285</sup> Under the international human rights system, the States have been held responsible for violations

<sup>279</sup> See, e.g., United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, January 30, 2009, paras. 11, 14, 15 and 16; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. C.H.R., OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), paras. 123-216; IACHR, Report No. 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras. 36-44; IACHR, Case 12.551, *Paloma Angelica Escobar Ledezma et al* (Mexico) Publication; IACHR, Case 12.578, *Maria Isabel Veliz Franco et al* (Guatemala), May 3, 2012; IACHR, Case 12.579, *Valentina Ronsendo Cantu* (Mexico), August 2, 2009; IACHR, Case 12.580, *Ines Fernandez Ortega* (Mexico), May 7, 2009.

<sup>280</sup> United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010, para. 10; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II.124/Doc.6, October 18, 2006, para. 140; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. C.H.R., OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 272; CEDAW Committee, General Recommendation 25, on *Temporary Special Measures*, U.N. Doc./CEDAW/C/2004/1/WP.1/Rev.1 (2004), section II, para. 12; IACHR, Case 12.551, *Paloma Angelica Escobar Ledezma et al* (Mexico) Publication; IACHR, Case 12.578, *Maria Isabel Veliz Franco et al* (Guatemala), May 3, 2012; IACHR, Case 12.579, *Valentina Ronsendo Cantu* (Mexico), August 2, 2009; IACHR, Case 12.580, *Ines Fernandez Ortega* (Mexico), May 7, 2009.

<sup>281</sup> See, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 247-255; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 245.

<sup>282</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 128. See, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 247-255.

<sup>283</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 129. See, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez and Others* (Mexico), March 9, 2007, paras. 247-255; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 245.

<sup>284</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 129. See, IACHR, Report No. 62/02, Case 12.285, *Michael Domingues* (United States), October 22, 2002, para. 83.

<sup>285</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010; United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/64/137, 11 February 2010 and A/RES/63/155, January 30, 2009; United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994; United Nations, *Beijing Declaration and Platform for Action, Fourth World Conference on Women*, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995); CEDAW, General Recommendation 19: *Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc.A/47/38 (1993). IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 129.

to the right to life when their authorities failed to undertake reasonable measures to protect women and children from violence resulting in their death even though they knew or should have known of a situation of risk.<sup>286</sup>

162. In the realm of prevention, the European Court of Human Rights and the CEDAW Committee have also issued a number of rulings finding States responsible for failures to protect victims from imminent acts of violence when they have considered that the authorities knew of a situation of real and immediate risk to a wife, her children, and/or other family members, created by an estranged husband, and the authorities failed to undertake reasonable measures to protect them from harm<sup>287</sup>. In determining the question of knowledge, one common feature of these rulings is that the State authorities had already recognized a risk of harm to the victim and/or her family members, but had failed to act diligently to protect them. The recognition of risk was reflected in the issuance of protection orders,<sup>288</sup> the detention of the aggressor,<sup>289</sup> assistance to the victim and/or her family members in the filing of complaints,<sup>290</sup> and the institution of criminal proceedings,<sup>291</sup> in response to the victim's and/or her family members' repeated contacts with the authorities.
163. The European Court of Human Rights has advanced important principles related to the scope and content of the State's obligation to prevent acts of violence. The European Court has considered the obligation to protect as one of reasonable means, and not results, holding the State responsible when it failed to take reasonable measures that had a real prospect of altering the outcome or mitigating the harm.<sup>292</sup> The Court has established that in the adoption of protection measures authorities should consider the prevalence of violence, its hidden nature, and the casualties of this phenomenon. This obligation may be applicable even in cases where victims have withdrawn their complaints.<sup>293</sup> The Court also ruled that a State's failure to protect women from violence breaches women's right to equal protection of the law, and that this failure does not need to be intentional for it to constitute a violation.<sup>294</sup>
164. For its part, the Inter-American human rights system has established that States must adopt comprehensive measures to comply with due diligence in cases of violence against women.<sup>295</sup> In other words, the State should prevent the risk factors and, at the same time, strengthen the institutions that can respond effectively in cases of violence against women.<sup>296</sup> In particular, the State should

<sup>286</sup> See, European Court of Human Rights, *Kontrová v. Slovakia*, Application No. 7510/04, ECHR 2007-VI (extracts); European Court of Human Rights, *Branko Tomasic and Others v. Croatia*, Application No. 46598/06, 15 January 2009; see also I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

<sup>287</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 132.

<sup>288</sup> See CEDAW Committee, Views on Communication No. 5/2005, *Sahide Goekce v. Austria*, July 21, 2004; CEDAW Committee, Views on Communication No. 6/2005, *Fatma Yildirim v. Austria*, July 21, 2004.

<sup>289</sup> See, European Court of Human Rights, *Branko Tomasic and Others v. Croatia*, Application No. 46598/06, 15 January 2009.

<sup>290</sup> See, European Court of Human Rights, *Kontrová v. Slovakia*, Application No. 7510/04, ECHR 2007-VI (extracts).

<sup>291</sup> See, European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009.

<sup>292</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 136; *E. and Others v. the United Kingdom*, no. 33218/96, para. 99.

<sup>293</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 132.

<sup>294</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, para. 191.

<sup>295</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>296</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258; IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011; See, Cases 12.496-12.498, *Claudia Ivette González and Others (Mexico)*, March 9, 2007.

have an appropriate legal framework of protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to complaints.<sup>297</sup>

165. Given the strong connection between the greater risks for violence that indigenous women confront and the social and economic inequalities they face, States must implement specific measures to address the social and economic disparities that affect indigenous women. The IACHR recalls the statistics described in the previous section that demonstrate that indigenous women in Canada constitute one of the most disadvantaged groups on Canada. These statistics, according to some civil society organizations:

point to the existence of institutionalized racism towards Aboriginal people, and towards Aboriginal women and girls, in the laws and policies of the Government of Canada with respect to the child welfare and criminal justice systems, and in the provision of education [...] and other essential services. Canada is failing to live up to its [international] obligations [...] to ensure that public authorities and public institutions eliminate racial discrimination, and to review and amend any laws or policies which have the effect of creating or perpetuating discrimination.<sup>298</sup>

166. Several UN bodies have urged the Canadian State to make more efforts to alleviate the social and economic deprivation among indigenous peoples in general and among indigenous women in particular.<sup>299</sup> The Committee on Economic, Social and Cultural Rights has raised as one of its principal subjects of concern the “disparities that still persist between Aboriginal peoples and the rest of the Canadian population in the enjoyment of Covenant Rights.” The Committee recommended the State to “ensure that legal aid with regard to economic, social and cultural rights is provided to poor people.”<sup>300</sup> It also recommended to “give special attention to the difficulties faced by homeless girls, who are more vulnerable to health risks and social and economic deprivation, and that it take all necessary measures to provide them with adequate housing and social and health services” and to “ensure that low-income women and women trying to leave abusive relationships can access housing options and appropriate support services in keeping with the right to an adequate standard of living.”<sup>301</sup>
167. More generally, the UN Special Rapporteur on Violence against Women included the following among the measures needed to meet the standard of due diligence: “to take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all rights and fundamental freedoms.”<sup>302</sup>

<sup>297</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258; IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011; See, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007.

<sup>298</sup> Lawyers’ Watch Canada and the B.C. CEDAW Group. *Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its review of Canada’s 19<sup>th</sup> and 20<sup>th</sup> reports, January 2012.

<sup>299</sup> UN, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mission to Canada*, 1 March 2004.

<sup>300</sup> UN, Committee on Economic, Social and Cultural Rights, *Considerations of Report Submitted by States Parties under Articles 16 and 17 of the Covenant*, 22 May 2006, para. 11.

<sup>301</sup> UN, Committee on Economic, Social and Cultural Rights, *Considerations of Report Submitted by States Parties under Articles 16 and 17 of the Covenant*, 22 May 2006, pp. 57 and 59.

<sup>302</sup> UN, *Report to the Commission on Human Rights*, Radhika Coomaraswamy, Special Rapporteur on violence against women UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85.

168. The Committee on Economic, Social and Cultural Rights has established the obligation of States parties to immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate [...] discrimination, for example “ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children [...]”<sup>303</sup> In addition, it stated that “national legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights.”<sup>304</sup>
169. The IACHR notes that the Human Rights Council passed a Resolution in which it “urged the States to increase measures to protect women and girls from all forms of violence, including sexual violence, by addressing their security and safety, including through, inter alia, awareness-raising, involvement of local communities, crime prevention laws, infrastructures, public transportation, sanitation facilities, street lighting and improved urban planning.”<sup>305</sup> It also affirmed the need for States to take practical steps to ensure women’s access to justice, including by creating an enabling environment where women and girls can easily report incidents of violence, including sexual violence, through, inter alia, victim services, testimonial support and the possibility of publication bans, by improving victim and witness protection, protecting confidentiality and privacy rights, and providing law enforcement officials and first responders with human rights training.”<sup>306</sup>
170. The IACHR has recognized the need for protection of economic, social and cultural rights, no longer simply in their individual dimension, but also in their collective aspect. In this regard, the Inter-American system has begun to outline standards on judicial protection mechanisms designed to ensure access to collective litigation and, in particular, on the scope of the obligation of states to make available complaint procedures of this type.<sup>307</sup>
171. The IACHR has held that the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. Moreover, the Inter-American system has established that the obligation of prevention encompasses all those measures of a legal, political, administrative and cultural nature that ensure protection of human rights, which include improving women’s enjoyment of economic, social and cultural rights. Violation of these rights is an unlawful act which may result in the punishment of the person who commits the violation. There is also an obligation to compensate the victims for the harmful consequences. That said, the obligation to prevent is an obligation of the State to implement adequate means or conduct itself appropriately, and the mere fact of a right having been violated is not, in and of itself, proof of a failure to prevent.<sup>308</sup> The finding of a

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<sup>303</sup> UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, 20 July 2009, para. 8.

<sup>304</sup> UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, 20 July 2009, para. 40.

<sup>305</sup> United Nations, General Assembly, Resolution adopted by the Human Rights Council 23<sup>rd</sup> Session, *Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence*, A/HRC/RES/23/25, 25 June 2013.

<sup>306</sup> United Nations, General Assembly, Resolution adopted by the Human Rights Council 23<sup>rd</sup> Session, *Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence*, A/HRC/RES/23/25, 25 June 2013.

<sup>307</sup> IACHR, *Access to Justice as a Guarantee of Economic, Social and Cultural Rights*. A Review of the Standards Adopted by the Inter-American System of Human Rights, 7 September 2007, para. 328.

<sup>308</sup> I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 252.

failure to prevent will depend on what the State has done or failed to do to prevent the human rights violation in question.

172. In this regard, the IACHR notes the 1997 decision in which an Ontario court found that the Toronto Police Service had been negligent in its investigation of a serial rapist, because of its failure to warn and protect victims.<sup>309</sup> The decision addressed the importance of the police's duty to warn. The court found that the police service discriminated on the basis of gender when it did not warn of the dangers to other women. This was based on the stereotype that women would become hysterical and panic and could thereby jeopardize the investigation.<sup>310</sup> This kind of recognition of the State's duty protect is crucial to achieving the implementation of the right of women and girls to live free from violence.
173. In considering a failed investigation or prosecution, the IACHR has determined that "in order to establish in a convincing and credible manner that [a] result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation,"<sup>311</sup> and must explore all the investigative leads possible that might identify the authors of the crime, so that they can be prosecuted and punished. The Inter-American jurisprudence has established that the obligation to investigate a death means that the effort to determine the truth with all diligence must be evident as of the very first procedures.<sup>312</sup> The State may be liable for a failure to order, practice or evaluate evidence that may have been essential for a proper clarification of the facts.<sup>313</sup>
174. The IACHR has singled out the investigation as the critical phase in cases involving violence against women and has written that the "importance of due investigation cannot be overestimated, as deficiencies often prevent and/or obstruct further efforts to identify, prosecute and punish those responsible".<sup>314</sup>
175. The IACHR has also held that the influence of discriminatory socio-cultural patterns can adversely affect an investigation of a case and the assessment of any evidence compiled.<sup>315</sup> In this regard, the creation and use of stereotypes becomes one of the causes and consequences of gender violence practiced against women.<sup>316</sup> The stereotypes in an investigation are the result of the existing situation of inequality and discrimination that many women confront due to multiple factors that are interrelated with their sex, such as race, age, ethnicity, socioeconomic condition and others.

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<sup>309</sup> Jane Doe v. Toronto (Metropolitan) Commissioner of Police.

<sup>310</sup> Jane Doe v. Toronto (Metropolitan) Commissioner of Police; MWCI, Violence Against Women: Evolving Canadian and International Legal Standards on Police Duties to Protect and Investigate, A Research Report Prepared for the MWCI, June 2012. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Evolving-Canadian-and-International-Legal-Standards-on-Policing-Obligations.pdf>

<sup>311</sup> IACHR, Report on Merits No. 55/97, *Juan Carlos Abella et al. (Argentina)*, November 18, 1997, para. 412.

<sup>312</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 300; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 383.

<sup>313</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 230.

<sup>314</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007 para. 38.

<sup>315</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 151.

<sup>316</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 401.

176. The Inter-American system has developed particular standards in relation to missing women. An obligation of strict due diligence arises with regard to reports of missing women, with respect to search operations during the first hours and days.<sup>317</sup> This obligation of means, is more rigorous and demands an immediate and effective response on the part of authorities when complaints of disappearances are filed, to adequately prevent violence against women.<sup>318</sup> This includes an exhaustive search. It also requires that the officials in charge of receiving missing person reports have the capacity and the sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.<sup>319</sup> Above all, it is essential that police authorities, prosecutors and judicial officials take prompt action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may have been detained.<sup>320</sup> Adequate procedures should be in place for reporting disappearances, which should result in an immediate and effective investigation. The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about her fate.<sup>321</sup>
177. Particularly regarding girls, states have a reinforced duty of due diligence. The Inter-American system has established that states have the obligation to adopt all positive measures necessary to guarantee the rights of girls who have gone missing.<sup>322</sup> Specifically, states have the duty to ensure that immediate, effective measures are applied to investigate any report of missing girls, and to attempt to locate her in the context of a crime, as soon as possible once the family reports their absence. In the event that a missing girl's body is found the state must investigate and prosecute and punish those responsible effectively and expeditiously.<sup>323</sup>
178. According to Amnesty International:

When a woman is targeted for violence because of her gender or because of her Indigenous identity, her fundamental rights have been abused. And when she is not offered an adequate level of protection by state authorities because of her gender or because of her Indigenous identity, those rights have been violated.<sup>324</sup>

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<sup>317</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

<sup>318</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 285.

<sup>319</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 285.

<sup>320</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

<sup>321</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

<sup>322</sup> IACHR, Report No. 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma et al.*, (Mexico), 12 July 2013. Available at: <http://www.oas.org/es/cidh/decisiones/fondos.asp#inicio>; I/A Court H.R. *Case of González et al. ("Cotton Field")*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 409.

<sup>323</sup> IACHR, Report No. 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma et al.*, Mexico, 12 July 2013. Available at: <http://www.oas.org/es/cidh/decisiones/fondos.asp#inicio>; I/A Court H.R. *Case of González et al. ("Cotton Field")*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 410.

<sup>324</sup> Amnesty International, Canada: *Stolen Sisters: A Human Response to Discrimination and Violence against Indigenous Women in Canada*, 4 October 2004.



## D. Link between due diligence, violence and discrimination

179. There is international recognition that the duty of States to act with due diligence in protecting and preventing violence against women has special connotations due to the discrimination women have historically faced as a group.<sup>325</sup>
180. International and regional systems have pronounced on the strong link between discrimination, violence and due diligence, emphasizing that a State's failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law.<sup>326</sup> In this regard, the CEDAW Committee has observed that violence against women is a form of discrimination and that discrimination is not limited to acts committed by governments or on their behalf; States may also be held accountable for the acts of private persons if they fail to act with due diligence in investigating and punishing the acts of violence and making reparations to the victims.<sup>327</sup> According to the United Nations Commission on Human Rights, "all forms of violence against women occur within the context of *de jure* and *de facto* discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State."<sup>328</sup>
181. The United Nations Special Rapporteur on Violence Against Women its Causes and Consequences has written that based on the precedents established in the Inter-American, European and universal human rights systems, "on the basis of the practice and *opinio juris* [...], it can be concluded that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence."<sup>329</sup>
182. The lack of due diligence in cases of violence against indigenous women has even more profound consequences as it affects not only the victims, but also their families and the communities to which they belong.
183. The Inter-American system has consistently found that a lack of due diligence that leads to impunity, and engenders further incidents of the very violence that was to be targeted, is itself a form of discrimination in access to justice.<sup>330</sup> The Inter-American jurisprudence has established that States have the obligation to use all the legal means at their disposal to

<sup>325</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 129.

<sup>326</sup> IACHR, Report No. 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma et al.*, (Mexico), 12 July 2013. Available at: <http://www.oas.org/es/cidh/decisiones/fondos.asp#inicio>; IACHR, Case 12.579, *María Isabel Véliz Franco et al.*, (Guatemala), May 3, 2012, available at: <http://www.oas.org/en/iachr/decisions/cases.asp>; IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 111. See generally, CEDAW Committee, Communication 2/2003, *Ms. A.T. v. Hungary*, 26 January 2005; European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009.

<sup>327</sup> United Nations, CEDAW, *General Recommendation 19*.

<sup>328</sup> United Nations Commission on Human Rights, Resolution 2003/45. Elimination of violence against women, para. 8. European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02 of June 9, 2009.

<sup>329</sup> United Nations, *Violence against Women. The Due Diligence Standard as a Tool for the Elimination of Violence against Women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. E/CN.4/2006/61, 2006, para. 29.

<sup>330</sup> IACHR, Case 12.777, *Claudina Velásquez Paiz et al.* (Guatemala), March 5, 2013, available at: <http://www.oas.org/en/iachr/decisions/cases.asp>; IACHR, Report No. 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma et al.*, (Mexico), 12 July 2013. Available at: <http://www.oas.org/es/cidh/decisiones/fondos.asp#inicio>; IACHR, Case 12.579, *María Isabel Véliz Franco et al.*, (Guatemala), May 3, 2012, available at: <http://www.oas.org/en/iachr/decisions/cases.asp>

combat such situations, “since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”<sup>331</sup>

184. The IACHR has established that judicial ineffectiveness in cases involving violence against women creates a climate of impunity that invites violence and discrimination against women “since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.”<sup>332</sup> When crimes committed against women go unpunished, this “sends the message that violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice.”<sup>333</sup>
185. To summarize, the American Declaration is recognized as constituting a source of legal obligations for OAS states including Canada. The organs of the international and regional human rights systems for the protection of human rights have developed jurisprudence that recognize the rights of indigenous peoples as well as the obligation to guarantee women’s rights to equality, non- discrimination and non- violence. In this regard, international and regional human rights systems have developed a set of principles when applying the due diligence standards in cases of violence against women, as well as particular standards in relation to missing women. International and regional systems have also addressed the strong link between discrimination, violence and due diligence, emphasizing that a State’s failure to act with due diligence with respect to a case of violence against women is a form of discrimination, and a failure on the State’s part to comply with its obligation not to discriminate. The lack of due diligence in cases of violence against indigenous women is especially grave as it affects not only the victims, but also their families and the communities to which they belong. In the next section, the IACHR will analyze Canada’s response to the situation of missing and murdered indigenous women in BC in light of the standards that have been described in this section.

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<sup>331</sup> I/A Court H.R., *Loayza Tamayo Case Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, par. 170, citing I/A Court H.R., *Case of the “White Van” (Paniagua-Morales et al.)* Judgment of March 8, 1998. Series C No. 37, para. 173.

<sup>332</sup> IACHR, Report on Merits No. 54/01, *María Da Penha Fernandes (Brazil)*, April 16, 2001, para. 56.

<sup>333</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 400.



CHAPTER 5  
CANADA'S RESPONSE  
TO VIOLENCE AGAINST  
INDIGENOUS WOMEN IN BC:  
PROGRESS AND SHORTFALLS



## CANADA'S RESPONSE TO VIOLENCE AGAINST INDIGENOUS WOMEN IN BC: PROGRESS AND SHORTFALLS

186. *In this section, the IACHR analyze Canada's response to the situation of missing and murdered indigenous women. In particular, it addresses the investigation and handling of the cases of missing and murdered indigenous women and the measures undertaken to evaluate deficiencies and seek advances in clarification and accountability. The IACHR also reviews the States' policies on prevention, awareness, education and victim services as well as its current focus and the priorities for moving forward. The information provided in this section is essential for the Commission in order to examine the State's progress as well as the remaining challenges for addressing the situation of missing and murdered indigenous women from a human rights perspective.*

### ***A. Investigation of the cases of missing and murdered indigenous women and girls***

#### **1. Division of competence and roles**

187. In order to analyze the State's response to the situation of missing and murdered indigenous women, it is important to understand the division of powers in Canada. Canada is a federal state. The Canadian Constitution Act 1867 confers legislative and executive powers on two levels of government: federal (central) and provincial (regional).
188. The Government of Canada has jurisdiction over matters such as foreign relations, national defense, coastal waters, indigenous peoples and lands reserved for them, and the substantive criminal law.<sup>334</sup> Provincial governments have jurisdiction over areas such as the establishment and regulation of municipalities, health care, education, social well-being, property, civil rights, and the administration of justice.<sup>335</sup> The municipalities exercise delegated authority from provincial and territorial governments. Canada also has many indigenous treaty governments and native band councils, which exercise various aspects of local governance.<sup>336</sup>
189. Specifically in relation to indigenous peoples, Section 91(24) of the Constitution Act 1867 stipulates that the federal government has legislative authority over "Indians, and lands reserved to the Indians." As was previously mentioned, the Indian Act constitutes the

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<sup>334</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 7.

<sup>335</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 7.

<sup>336</sup> According to the Canadian State, to facilitate the functioning of a multi-level system of governance, ad hoc and standing federal-provincial/territorial fora meet on a variety of topics to promote co-operation on matter of over-lapping interest and jurisdiction. Canada refers to the Committee of Officials on Human Rights as an example, as well as consultations with Indigenous governments and the involvement of civil society as a model of co-operative governance. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, paras. 7-8.

federal legislation, first passed in 1876 and amended on multiple occasions, which identifies government obligations towards indigenous peoples. The State indicated that this legislation can be regarded as providing the federal government two separate powers with respect to indigenous peoples: 1) making laws with respect to indigenous people, whether or not they reside on lands reserved for them; and 2) making laws with respect to the lands reserved for indigenous peoples. Also, laws of general application made by the provinces and territories apply to indigenous peoples, as long as they do not contradict or impede federal laws.<sup>337</sup>

190. In addition, federal legislation (s. 88 of the Indian Act) allows for substantial provincial legislative control over indigenous peoples. This means that both the federal and provincial governments are responsible for the legal status and conditions of indigenous women and girls and their communities.
191. According to civil society organizations “[t]his jurisdictional situation reinforces and perpetuates the barriers to social and economic welfare faced by Aboriginal women.”<sup>338</sup> More specifically:

Aboriginal women continue to be denied essential forms of assistance and to receive piece-meal services because of the lack of clarity about legislative jurisdiction and the competing interests of federal, provincial and territorial governments regarding governments’ constitutional, moral and financial responsibilities for providing social services to Aboriginal peoples. This issue was first identified over 35 years ago, yet little has been done to ameliorate the situation.<sup>339</sup>

## 2. Policing in BC

192. In order to understand the State’s response to the cases of missing and murdered indigenous women, it is important to review how policing is structured in British Columbia. Policing in Canada is a shared responsibility. The federal government is responsible for the substantive criminal law including the Criminal Code and other federal criminal statutes. Through its “peace, order and good government” power, the federal government has established a national federal police force, the Royal Canadian Mounted Police (RCMP).<sup>340</sup> Provinces are responsible for the “administration of justice”, including the provision of police services to enforce municipal, provincial and federal criminal laws.<sup>341</sup> Additionally, there are special arrangements for indigenous policing in the country.<sup>342</sup>

<sup>337</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 35.

<sup>338</sup> B.C. CEDAW Group, *Inaction and Non-Compliance: British Columbia’s Approach to Women’s Inequality*, Submission of the B.C. CEDAW Group to the UN CEDAW Committee, September 2008, pp. 10-11. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CEDAWCanadaB.C.2008.pdf>

<sup>339</sup> B.C. CEDAW Group, *Inaction and Non-Compliance: British Columbia’s Approach to Women’s Inequality*, Submission of the B.C. CEDAW Group to the UN CEDAW Committee, September 2008, pp. 10-11. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CEDAWCanadaB.C.2008.pdf>

<sup>340</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 156.

<sup>341</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 156.

<sup>342</sup> The State indicated that in 1991, the First Nations Policing Program was introduced to strengthen public safety and security, to increase responsibility and accountability, and to build partnerships with First Nation and Inuit communities. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 162.

193. Although it is a federal institution, in British Columbia the RCMP performs three separate policing functions: federal, provincial and municipal. The RCMP is B.C.'s provincial police force in some areas. The RCMP's role in B.C. can be separated into two categories: detachment policing and the provincial police infrastructure. Detachment policing provides local police services to unincorporated municipalities and municipalities under a certain population. These are often in rural areas of the province. Essentially, the RCMP is serving as the local police force in areas that are not large enough to provide their own city police force. This role includes uniformed patrols, response-to-call duties, investigative services, community-based policing, traffic enforcement and administrative support to provincial detachments.<sup>343</sup> The RCMP provincial police infrastructure is responsible for resolving high risk incidents, targeting organized crime, gang violence and serial crimes, responding to existing and emerging crime trends, and providing security and policing services for large scale community events and emergencies.<sup>344</sup>
194. There are agreements that allow the RCMP to act as B.C.'s provincial police force as well as the municipal force for municipalities with RCMP services. (This is in contrast to some other Canadian provinces which have their own police force, e.g., the Ontario Provincial Police.) The Provincial Police Service Agreements (PPSA) are between the federal and provincial governments, and the Municipal Police Service Agreements (MPSA) are between the Province of B.C. and the municipalities.<sup>345</sup> British Columbia is currently policed through 11 independent municipal police departments, approximately 61 RCMP detachments, the South Coast B.C. Transportation Authority Police Service, and one First Nations administered force, Stl'atl'imx Tribal Police Service, based in Lillooet. Some of the RCMP detachments serve more than one community. The RCMP's Lower Mainland District boundary encompasses 22 police agencies, whereas the Vancouver Census Metropolitan Area (formerly Greater Vancouver Regional District) encompasses fewer agencies.<sup>346</sup> The number of policing agencies depends on which boundaries are used.
195. The Vancouver Police Department (VPD) is the police force for the city of Vancouver. It is governed by the Vancouver Police Board under the authority of the British Columbia Police Act. According to NWAC, which has analyzed this information, the majority of cases of missing and murdered indigenous women in British Columbia – 160 cases – were investigated by the RCMP (55%), followed by municipal police forces (39%).<sup>347</sup> At least 6% of cases were found to involve more than one detachment or police service. This includes cases handled by the Missing Women Task Force (a joint force operation).<sup>348</sup>

<sup>343</sup> State of Canada. *Royal Canadian Mounted Police, Best Practices, Contract and Aboriginal Policing*, August 2013.

<sup>344</sup> State of Canada. *Royal Canadian Mounted Police, Best Practices, Contract and Aboriginal Policing*, August 2013.

<sup>345</sup> State of Canada. *Royal Canadian Mounted Police, Best Practices, Contract and Aboriginal Policing*, August 2013.

<sup>346</sup> Wally Oppal, "Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary", Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 18. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>347</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia*, Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_B.C..pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_B.C..pdf)

<sup>348</sup> NWAC, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia*, Available at: [http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET\\_B.C..pdf](http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_B.C..pdf)



### 3. The Investigations in Prince George and Vancouver Downtown Eastside

196. As mentioned earlier in the report, since the 1970's a considerable number of women and girls have been reported missing or murdered along the Highway of Tears, many of whom were hitchhiking. Official police records refer to 18 missing or murdered women and girls along these highways, approximately half of them indigenous.<sup>349</sup>
197. The E-Pana investigation started in Prince George in 2005 to investigate whether a serial killer was responsible for the Highway of Tears murders that took place between 1969 and 2006.<sup>350</sup> The Canadian State indicated to the IACHR that, as a result of the RCMP's work, several cases have been resolved or advanced. The task force identified an American man named Bobby Jack Fowler as a suspect for the murder of 16 year old Colleen MacMillen. The man was linked to the case because his DNA was found in the victim's blouse which had been preserved. There was also research that showed that he was in Canada several times in the early 70's.<sup>351</sup> Investigators also believe that this person may have killed two other young woman on the official Highway of Tears' list, but so far have not established a link with any other murders or disappearances. This investigation continues.<sup>352</sup> To date, the IACHR was informed that most of the Highway of Tears disappearances and murders remain unsolved.
198. As was mentioned earlier in the report, in Vancouver's Downtown Eastside, police investigations into the disappearances began in the 1990s. In 1997 a man named William Robert Pickton was arrested and charged with assault involving a knife and attempted murder of a woman on his property, a pig farm outside of Vancouver. However, the prosecutor decided to stay the charges and Pickton was released.<sup>353</sup> The disappearances and murders continued. In 2001, a joint task force known as Project Even-Handed was established by the RCMP and the VPD to investigate together the multiple cases of murdered and missing women from the DTES. While the establishment of the task force improved coordination between different policing authorities, there were still flaws in the ways in which the investigation was carried out. Most notably there was a failure to adequately prevent and investigate the disappearances that were still ongoing during the investigation.
199. Robert William Pickton was arrested again in 2002. Pickton was charged with 27 counts of first-degree murder<sup>354</sup> of which a majority of the victims were indigenous.<sup>355</sup> In 2007

<sup>349</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012. See also Lheili T'enneh First Nation, Carrier Sekani Family Services, Carrier Sekani Tribal Council, Prince George Native Friendship Center, Prince George Nechako Aboriginal Employment & Training Association, "A collective voice for the victims who have been silenced: The Highway of Tears Symposium Recommendations Report," June 16, 2006.

<sup>350</sup> The Canadian government indicated that since 2005, the province has spent approximately \$20 million on this investigation and currently spends around \$5 million per year.

<sup>351</sup> CBSNews. *48 Hours: Highway of Tears murder solved with improbable DNA sample*. November 6, 2012. Available at: <http://www.cbsnews.com/news/48-hours-highway-of-tears-murder-solved-with-improbable-dna-sample/>; National Post, *With one murder solved, difficult "Highway of Tears" investigations go on*, September 25, 2012. Available at: <http://news.nationalpost.com/2012/09/25/with-one-murder-solved-difficult-highway-of-tears-investigations-go-on/>

<sup>352</sup> Meeting with RCMP officials in Prince George. August 2013. See also: Royal Canadian Mounted Police in B.C., *E-PANA Announce Significant Development and Request for Public Assistance*. Available at: <http://cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=1075&languageId=1&contentId=27095>

<sup>353</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

<sup>354</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

<sup>355</sup> Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*, May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

Pickton was convicted of 2nd degree murder on six counts and sentenced to 6 terms of life imprisonment without parole. Proceedings on the other counts were stayed in 2010<sup>356</sup> on the basis that “any additional convictions could not result in any increase to the sentence that Mr. Pickton [had] already received.”<sup>357</sup> According to the information received, there was evidence at trial that suggested that Pickton may have murdered as many as 49 women.<sup>358</sup>

200. Despite his arrest and charges in 1997 and compelling information received as early as 1998 and 1999 that suggested that Pickton was a serial killer responsible for many disappearances,<sup>359</sup> it took several years to finally arrest him for his crimes, a period of time during which more women went missing and were murdered.
201. For a long time, police and city officials denied that there was a pattern to the disappearances or that women in the area were in particular danger.<sup>360</sup> The police were also criticized for failing to warn women in the area or otherwise take effective steps to prevent future murders and disappearances. The factors that may have contributed to this situation included the existence of multiple policing jurisdictions in British Columbia, as described above. This resulted in confusion between the RCMP and the VPD regarding responsibility for the investigation. The Vancouver Police Department issued an investigative report that concluded that VPD management failed to recognize early enough that there was a serial killer at work.<sup>361</sup>
202. The VPD investigative report concluded that, despite the many deficiencies in the VPD investigation, the VPD did not directly cause the failure of the investigation into Pickton. This was because the RCMP, not the VPD, had responsibility for the investigation. On the other hand, the report concluded that the VPD may have been indirectly responsible, saying that “[i]f the VPD investigation had been better managed... the VPD could have brought more pressure to bear on to the RCMP to pursue the Pickton investigation more vigorously.”<sup>362</sup>
203. In its response to the IACHR's report, the Government of Canada indicated that the Vancouver Police Department's Missing Persons Unit “has come to be recognized as a model practice in Canada and has a solve rate for missing persons of over 99%.”<sup>363</sup>

<sup>356</sup> Notes of Hearing, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 141<sup>o</sup> Period of Sessions, March 28, 2012. Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*. May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

<sup>357</sup> Lawyers' Watch Canada and the B.C. CEDAW Group. *Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada*. Submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its review of Canada's 19<sup>th</sup> and 20<sup>th</sup> reports, January 2012.

<sup>358</sup> Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*, May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

<sup>359</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>o</sup> Period of Sessions, March 28, 2012.

<sup>360</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>o</sup> Period of Sessions, March 28, 2012.

<sup>361</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

<sup>362</sup> Vancouver Police Department, Doug LePard, Deputy Chief Constable, *Missing Women Investigation Review*, August 2010. Executive Summary, Available at: [http://vancouver.ca/police/media/2010/MWInvestigationReview\\_final2.pdf](http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf)

<sup>363</sup> State of Canada, Response to the IACHR's Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

204. The investigations carried out in British Columbia in the wake of these killings and disappearances have been subjected to considerable examination and analysis to determine the reasons for failures in terms of approach, process and outcome. One of the leading efforts in this regard is the establishment in September of 2010 of the Missing Women Commission of Inquiry (MWCI), created in order to examine, among other issues, the conduct of the investigations carried out by the different police forces in Vancouver's DTES between January 1997 and February 2002. Wally Oppal was appointed Commissioner of this inquiry. The final report of the MWCI, entitled *Forsaken*, was issued to the public on December 17, 2012. The MWCI is analyzed later in this report in more detail, but some of the findings in relation to the investigations are useful here to have an overview of the deficiencies.
205. Commissioner Oppal found critical police failures, or patterns of error, that had a detrimental impact on the outcomes of the missing and murdered women investigations. These included: poor report taking and follow up on reports of missing women; faulty risk analysis and risk assessments; inadequate proactive strategy to prevent further harm to women in the DTES; failure to follow Major Case Management practices and policies; failure to consider and properly pursue all investigative strategies; failure to address cross-jurisdictional issues and ineffective coordination between police forces and agencies; and failure of internal review and external accountability mechanisms.<sup>364</sup>
206. Commissioner Oppal stated that "the initiation and conduct of the missing and murdered women investigations were a blatant failure." He identified critical failures at several stages of the investigation, including:
- Reporting: time delays in reporting women missing; inconsistent intake procedures; barriers to reporting;
  - Initial Investigation: lack of urgency in immediate response; inadequate interviewing of reportees;
  - Follow-up Investigations: unexplained gaps in investigation; insufficient interviews with family, friends and associates; failure to use posters and other media;
  - Communication with Family Members or Reportees: degrading or insensitive treatment of families; conclusions on degrading and insensitive treatment; and Inter-Jurisdictional Cooperation.<sup>365</sup>
207. Commissioner Oppal also made findings of fact in relation to the police forces' conduct, stating that the forces engaged in: discrimination, systemic institutional bias and political and public indifference; a want of leadership; poor systems, limited and outdated policing approaches and standards; fragmentation of policing; inadequate resources and allocation issues; and problematic police force structure and culture, personnel issues and inadequate training. He also noted that there were allegations of conspiracy and cover-up on the part of the police forces.<sup>366</sup> The MWCI also determined that an unclear delineation between federal

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<sup>364</sup> Wally Oppal, "*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*", Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 28. Available: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>365</sup> Wally Oppal, "*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*", Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 43 - 54. Available: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>366</sup> Wally Oppal, "*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*," Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 28. Available: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

and provincial powers in the province's contracts with the RCMP complicated the ability of the province to assert legislative or regulatory control over the RCMP.<sup>367</sup>

#### 4. The Experience of the Families

208. As mentioned earlier in the report, many indigenous peoples, organizations and civil society groups have criticized the State's response for failing to prevent and adequately investigate these crimes.<sup>368</sup> Family members coming from small communities have described dismissive attitudes from police officers working on their cases, as well as a lack of adequate resources allocated to the missing women and a failure, for a significant amount of time, both to investigate and to recognize a pattern of violence.<sup>369</sup> The MWCI documented and analyzed this problem. During the IACHR's visit, many families of missing and murdered indigenous women complained that police officers did not take their reports seriously and frequently stereotyped the women as transient.<sup>370</sup>
209. Family members testifying before the IACHR also indicated that when they reported their loved ones missing, police authorities told them that they had to wait 72 hours, even in cases where the missing victim was a child. On other occasions family members of victims had to insist 8 or 9 times before the police would take seriously their concerns.<sup>371</sup> Although the State has indicated that there is no waiting period for reporting a missing person,<sup>372</sup> the many experiences of families of missing and murdered indigenous women who testified before the IACHR indicate something different.
210. The IACHR was informed in Prince George that the E-Pana investigative team, since its creation, has worked with indigenous peoples' organizations like Carrier Sekani Family Services. Over the last 7 years Carrier Sekani Family Services has worked to build a relationship with the E-Pana team to bring the team and the families together. In this regard, the IACHR received information that the investigative team is making a much more concerted effort to keep the victims' families up to date with changes in the investigation and that they are trying to make more time to meet with families in person at their homes: "the reaction times are a lot better from when my sister went missing; because when she went missing, there was absolutely no support from our community, nor from the RCMP. We had to do the searching and everything on our own."<sup>373</sup> Although some families would still like to have more regular updates and a better relationship with the RCMP, the relationship and coordination, at least in this regard, seem to be improving.

<sup>367</sup> In the past, provincial inquiries into RCMP activities have been met with litigation that challenged the jurisdiction of the province. There is extensive case law on the jurisdiction of provincial inquiries vis-à-vis the RCMP. Wally Oppal, "Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary", Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 22. Available: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>368</sup> Meeting with families of victims, Prince George and Vancouver, August 2013. Meeting with civil society organizations and families of victims, Ottawa, August 2013.

<sup>369</sup> Meeting with families of victims, Prince George and Vancouver, August 2013. Meeting with civil society organizations and families of victims, Ottawa, August 2013.

<sup>370</sup> NWAC, FAFIA and University of Miami School of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>371</sup> Meeting with families of victims, Prince George and Vancouver, August 2013. Meeting with civil society organizations and families of victims, Ottawa, August 2013.

<sup>372</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 280.

<sup>373</sup> Testimony of Brenda Wilson, Meeting with families of missing and murdered indigenous women in Prince George, August 2013.

211. This is notwithstanding the information the IACHR consistently received about distrust of the RCMP: “today nothing has happened; nothing has changed in the judicial system and in the police system to ensure that [this] never happens again.”<sup>374</sup> The sense of distrust and fear of police officers in the DTES is strong, particularly among sex workers, and despite the efforts that have been taken to address this. One example of such efforts is the VPD’s issuance of “Sex Work Enforcement Guidelines.” Among other issues these Guidelines direct VPD officers to “treat those in the sex industry with respect and dignity.”<sup>375</sup> The situation of women in the DTES and their interactions with the VPD was described to the IACHR as a “complete breakdown of the faith in institutions.”<sup>376</sup> Moreover, women, particularly sex workers, indicated that they don’t feel safe reporting assaults to the authorities.

## ***B. Measures to evaluate deficiencies and propose advances in clarification and accountability***

### **1. Inquiries**

#### ***a. Civil society inquiries***

212. Since 1996 there have been at least 29 official inquiries and reports dealing with aspects related to missing and murdered indigenous women nationwide, which together have made 500 recommendations for action.<sup>377</sup> In addition to official inquiries, civil society groups have carried out their own inquiries.
213. The IACHR was informed that a symposium was organized in Prince George in 2006 to raise public awareness and create a call for action. More than 500 people were in attendance. 33 recommendations came out of this meeting, covering areas including: victim prevention, emergency readiness, victim family support and community development.<sup>378</sup> The B.C. Government informed the IACHR that between 2006 and 2010 the province has provided over \$150,000 to help implement these recommendations.<sup>379</sup> The Highway of Tears Body was formed as a result of one of the symposium recommendations, tasked with providing direction and support in the implementation of the symposium report.<sup>380</sup>

<sup>374</sup> Testimony from Mary Teegee, Meeting with Civil Society in Prince George.

<sup>375</sup> Vancouver Police Department, *Sex Work Enforcement Guidelines*. Available at: <http://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>

<sup>376</sup> Meeting with civil society organizations, Vancouver, Canada, August 9, 2013.

<sup>377</sup> United Nations, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, *The Situation of indigenous peoples in Canada*, A/HRC/27/52/Add.2, 7 May 2014, para. 35; NWAC, *List of Reports and Recommendations on Violence against Indigenous women and girls*, National Forum on Community Safety and Ending Violence, April 9-10, 2013, Edmonton, Alberta, available at: [http://www.afn.ca/uploads/files/violenceforum/ending\\_violence\\_workbook.pdf](http://www.afn.ca/uploads/files/violenceforum/ending_violence_workbook.pdf)

<sup>378</sup> Highway of Tears, *Preventing Violence against Women*. Available at: <http://www.highwayoftears.ca/about-us/highway-of-tears>

<sup>379</sup> Updated information provided by the Canadian State on July 2, 2013.

<sup>380</sup> The Governing Body is made up of Carrier Sekani Family Services representatives, many of the victims’ family members, representatives from the North District RCMP, a representative from the Prince George Native Friendship Center and a representative from the Ministry of Justice. According to the information received, the Governing Body meets quarterly, dependent on funding, to discuss the direction of the initiative and help prioritize activities and areas of focus.

214. In 2011, with financial support from the Government of Canada, the provincial government of British Columbia and the NWAC co-hosted the *Collaboration to End Violence: National Aboriginal Women's Forum*.<sup>381</sup> The Forum explored the underlying issues related to violence and missing and murdered indigenous women in British Columbia. More than 250 people from all provinces and territories in Canada attended the Forum, with participants including representatives of provincial and territorial government departments and agencies, national indigenous peoples, and First Nation, Métis and Inuit communities and community-based organizations.
215. In February 2013, the Parliament of Canada created an all-party committee with the mandate to inquire into the situation of missing and murdered indigenous women and girls in Canada and to propose solutions to the root causes of violence against indigenous women. On March 7, 2014, this committee released its final report.<sup>382</sup> The report establishes 16 recommendations, some of which build on existing government initiatives. The report indicates that: women must actively participate in developing solutions, solutions must be holistic in nature, programs and services must be culturally and geographically adaptable and solutions must be developed and offered at the community level. Also, a partnership between the different levels of Government and First Nations, Metis and Inuit people is required to adequately address the issue of violence against indigenous women and children.<sup>383</sup>
216. Indigenous peoples' organizations, human rights groups and federal opposition parties have criticized the report as "promoting the status quo and failing to make comprehensive, concrete, time bound recommendations to prevent violence against indigenous women and girls."<sup>384</sup> According to Amnesty International, "like the report released by the Parliamentary Committee on the Status of Women in December 2011, the report endorses existing government initiatives while vaguely calling for 'further examination' of other issues."<sup>385</sup>

### ***b. Official Inquiry - British Columbia Government's Missing Women Commission of Inquiry (MWCI)***

217. As briefly explained above, on September 27, 2010 the B.C. provincial government established the Missing Women Commission of Inquiry. Wally Oppal, was named Commissioner. Under its terms of reference, the Missing Women Commission of Inquiry was commissioned to:
- a. inquire into and make findings of fact respecting the conduct of the investigations conducted between January 23, 1997 and February 5, 2002, by police forces in

<sup>381</sup> NWAC, *Collaboration to End Violence: National Aboriginal Women's Forum 2011*. Available at: [www.nwac.ca/research/collaboration-end-violence-national-Aboriginal-womens-forum-2011](http://www.nwac.ca/research/collaboration-end-violence-national-Aboriginal-womens-forum-2011)

<sup>382</sup> House of Commons, *Invisible Women: A Call to Action, A Report on Missing and Murdered Indigenous Women in Canada, Report of the Special Committee on Violence Against Indigenous Women*, March 2014. Available at: <http://www.parl.gc.ca/content/hoc/Committee/412/IWFAR/Reports/RP6469851/IWFARp01/IWFARp01-e.pdf>

<sup>383</sup> House of Commons, *Invisible Women: A Call to Action, A Report on Missing and Murdered Indigenous Women in Canada, Report of the Special Committee on Violence Against Indigenous Women*, Chapter Five –What Needs to be Done: the Committee's Recommendations, March 2014. Available at: <http://www.parl.gc.ca/content/hoc/Committee/412/IWFAR/Reports/RP6469851/IWFARp01/IWFARp01-e.pdf>

<sup>384</sup> The Assembly of First Nations, the Inuit Women's Association, Native Women's Association of Canada, Idle No More, Indigenous Nationhood Movement, Amnesty International, Human Rights Watch, the New Democratic Party of Canada, Liberal Party of Canada. The statements are available at: <http://www.amnesty.ca/blog/broad-condemnation-of-parliamentary-committee-report-on-violence-against-indigenous-women>

<sup>385</sup> Amnesty International, *Parliamentary Committee report fails Aboriginal women and girls and all Canadians*, March 7, 2014. Available at: <http://www.amnesty.ca/news/news-releases/parliamentary-committee-report-fails-aboriginal-women-and-girls-and-all-canadians>

British Columbia respecting women reported missing from the Downtown Eastside of the City of Vancouver;

- b. inquire into and make findings of fact respecting the decision of the Criminal Justice Branch on January 27, 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;
  - c. recommend changes considered necessary respecting the initiation and conduct of investigations in British Columbia of missing women and suspected multiple homicides;
  - d. recommend changes considered necessary respecting homicide investigations in British Columbia by more than one investigating organization, including the coordination of those investigations; and
  - e. submit a final report to the Attorney General on or before October 31, 2011.<sup>386</sup>
218. Some of the findings regarding the conduct of the investigations by the police forces have been described in paragraphs above. The IACHR notes that Commissioner Oppal did not make any legal findings of discrimination in his report, although he suggested that such discrimination may exist as a reflection of societal inequality. He indicated that the “continuing racism and sexism within Canadian society” is likely to be reproduced in discriminatory policies and practices within law enforcement:

My synthesis of these legal concepts is that bias can operate in numerous ways and often through unintentional acts and failures to act. Government actors, and more specifically the police, have positive obligations to take measures to respond to violence against women, especially vulnerable groups of women. Law enforcement agencies mirror the society they serve. Thus the historic and continuing racism and sexism within Canadian society is likely to be reproduced in discriminatory policies and practices within law enforcement, unless and until steps are taken to actively work toward bias-free policing.<sup>387</sup>

219. The MWCI also considered practical measures to ensure equal protection under the law. Accordingly:

Lawyers and judges have a tendency to think of the constitutional right to equality and provincial, federal and international human rights protections as something declared from time to time by the courts, generating a flurry of attention and activity. The more important ways to protect human rights are through non-legalized avenues: equality must be integrated into everyday practices and policies as well as law. Integration of equality norms by all authorities, particularly those who exercise discretionary powers, is essential to overcoming inequalities in society and creating substantive equality step by step.<sup>388</sup>

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<sup>386</sup> State of Canada, *General Session Hearing Concerning Reports of missing and murdered indigenous women and girls in British Columbia, Canada*. Response of the Government of Canada to the request for information, July 23, 2012. The original Terms of Reference required the final report to be submitted to the Attorney General by December 31, 2011; however, the Commission was granted an extension to October 31, 2012.

<sup>387</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 17. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>388</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 117. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

220. Commissioner Oppal stated that he could “neither pronounce nor stay silent on the issue of whether wider equality-promoting measures are required to ensure fair and just policing in British Columbia.”<sup>389</sup> He concluded:

[t]hat the best way to overcome this apparent impasse, created by past findings and present unknowns, is to recommend that the Provincial Government direct the Director of Police Services to undertake equality audits of police forces in British Columbia with a focus on the police duty to protect marginalized and Aboriginal women from violence.<sup>390</sup>

221. He then recommended:

[t]hat the Minister of Justice direct the Director of Police Services to develop and implement a non-discrimination standard similar to the Alberta standard. A restatement of the policing standard on roles and responsibilities would provide both an educational function and a direct basis for accountability for individual police officers and the police service as a whole. Based on the distinct makeup of the community served, police forces could then develop specific directives to operationalize equality and non-discrimination norms in their own jurisdiction.<sup>391</sup>

...

In Canada, police owe a duty to warn arising from the Charter protection of equality and life and security of the person. However, in my view, a specific statutory recognition of this duty is required. Given my findings, I recommend that legislation be enacted to structure the police's discretion to issue a warning. Only a clear positive statement of this responsibility can ensure that police adhere to a structured and non-discriminatory policy when faced with the issue of whether a duty to warn exists in specific circumstances. I recommend that the Minister of Justice direct the Director of Police Services to consult with the B.C. Association of Municipal Chiefs of Police, the RCMP, and community representatives, particularly women's advocacy groups and Aboriginal organizations, to develop the wording of a statutory provision on the legal duty to warn and a protocol on its interpretation and application.<sup>392</sup>

222. In considering whether the RCMP has a fiduciary duty toward indigenous peoples, Commissioner Oppal stated that he was unable to make such a determination under the current state of the law, but then went on to add:

However, the fact that there is no legal fiduciary duty on the RCMP towards Aboriginal people is not the end of the question. The RCMP has acknowledged its special relationship with Aboriginal peoples in various policies and practices. An equally important non-

<sup>389</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 118. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>390</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 118. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>391</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 119. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>392</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 119. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>



legal “trust” relationship between the police and Aboriginal people exists and should be further refined and developed. I am aware that the RCMP has entered into an agreement with the Assembly of First Nations on the issue of missing and murdered Aboriginal women. I am of the view that there is ample room for improvement and expansion of the RCMP obligations in this regard and that the specific recognition of the RCMP relationship with Aboriginal peoples is necessary.<sup>393</sup>

223. Commissioner Oppal recommended:

First, I recommend that the Provincial Government adopt an explicit inclusion of equality as a fundamental principle in the B.C. Crown Policy manual. The wording of this provision should be developed in consultation with the Crown Counsel Association and community representatives.

Second, I conclude that Crown manuals should provide specific policy guidance concerning the duty of Crown Counsel to apply the right to equality in their work in the context of violence against vulnerable women.

[...]

One way to overcome this compounding dynamic of “devaluing” already “devalued” witnesses is to adopt a general policy statement directly addressing marginalized witnesses who are at risk of non-prosecution of offences against them as a result of Crown discretion. I recommend that the Provincial Government adopt this type of policy statement in the B.C. Crown Policy Manual, in consultation with the Crown Counsel Association and community representatives. The Public Prosecution Service of Canada policy referred to above is one model to be considered in the formulation of such a policy.<sup>394</sup>

224. In relation to proposing a comprehensive strategy to protect indigenous and rural women, the MWCI stated:<sup>395</sup>

A comprehensive strategy to protect Aboriginal and rural women will have many components. The Commission received proposals for change ranging from self-esteem and self-protection courses in schools to video surveillance at key hitchhiking spots on the highway. The school’s role in providing safety education through methods that are engaging and attuned to students was prioritized by community members – schools are clearly a focal point in the communities.

My main recommendation is to support the full implementation of the action plan established through the Highway of Tears Symposium process, which was deeply collaborative and engaged communities all along Highway 16. The Highway of Tears

<sup>393</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 120. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>394</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 121. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>395</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 138. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

Symposium Report advances the following short and long-term goals relating to four main areas: victim prevention; emergency planning and team response; victim family counselling and support; and community development and support. Thirty-three recommendations are made; these focus on developing and implementing three plans:

- A Victim Prevention Plan;
- A Community Emergency Readiness Plan; and
- A Regional First Nations Crisis Response Plan.

225. Additionally:

There is no question that the transition from the North to an urban centre makes young women particularly vulnerable and, therefore, it needs to be managed to minimize the risks. The Commission's research and consultations show that three specific dangers or risk factors for exposure to violence must be addressed. I recommend that action be taken to address each of these risks in order to enhance the safety of Aboriginal and rural women. First, steps must be taken to enhance safety on reserves so that women are not driven to leave for potentially less secure environments. Aboriginal women's organizations should be provided additional funding to provide this programming so that fewer women are forced to escape to urban areas. Second, safe homes and transition shelters must be accessible and meet the cultural needs of Aboriginal women and Aboriginal youth when they do leave home. This is particularly challenging in the North because of geography and economic disparity; steps must be taken to overcome these barriers. Third, steps must be taken to address the vulnerability of Aboriginal women to sexual exploitation and entry into the survival sex trade during the transition from rural to urban centres and to facilitate and support exiting the survival sex trade. A collaborative action research project is required to better understand these dynamics and to develop a workable action plan. The MAKKA study project design and research principles should be considered in initiating and conducting this research project.<sup>396</sup>

226. Several organizations have criticized the MWCI's mandate and work.<sup>397</sup> According to the B.C. Union of British Columbia Indian Chiefs, "the failed inquiry, far from assisting indigenous women from the DTES, ironically reinforced their marginalization."<sup>398</sup> Their statement continued: "the Inquiry missed a significant opportunity to respond to this critical issue and to adequately address the social and economic conditions of indigenous women and girls in Vancouver and in B.C. that play into a complex set of conditions that "normalize" violence against indigenous women and girls."<sup>399</sup>

<sup>396</sup> Wally Oppal, "Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary", Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 139-140. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>397</sup> See for example: Open Letter: Community and Advocacy Groups Strongly Object to Stalling by Province since Conclusion of Missing Women Commission of Inquiry and Set out Requirements for Participation. Letter issued to Honourable Suzanne Anton, Minister of Justice and Attorney General, July 13, 2013, by the following organizations: Aboriginal Front Door Society, Amnesty International Canada, Atira Women's Resource Society, B.C. Assembly of First Nations, B.C. Civil Liberties Association, B.C. Native Women's Association, Battered Women's Support Services, Butterflies in Spirit, Carrier Sekani Tribal Council, Downtown Eastside Women's Centre Ending Violence Association British Columbia, February 14th Women's Memorial March Committee, Lookout Emergency Aid Society, Justice for Girls, PACE: Providing Alternatives Counselling & Education Society, PHS Community Services Society, Pivot Legal Society Union of B.C. Indian Chiefs, Union Gospel Mission, West Coast LEAF, WISH Drop-In Centre Society.

<sup>398</sup> Union of British Columbia Indian Chiefs, Letter to Commissioners Robinson and Shelton regarding the visit to Canada, August 7, 2013.

<sup>399</sup> Union of British Columbia Indian Chiefs, Letter to Commissioners Robinson and Shelton regarding the visit to Canada, August 7, 2013.

227. According to the information received by the IACHR, Commissioner Oppal received 23 applications for participant status and 13 applications for funding recommendations. Commissioner Oppal granted full or limited participant status to all of the applicants.<sup>400</sup> However, for many groups participant status was not sufficient without proper funding for legal representation.<sup>401</sup> Commissioner Oppal recommended to the Attorney General that participants receive financial assistance to pay for legal counsel to facilitate participation appropriate to the extent of their interest.<sup>402</sup>
228. In response, the Provincial Government agreed to fund counsel to the coalition of families, and appointed Cameron Ward and Neil Chantler as their representation, but did not provide funding for indigenous peoples, women's groups, sex workers' groups and human rights organizations that had been granted full or limited standing.<sup>403</sup> According to the Canadian State, "the government determined that the family members should take priority for any available financial assistance, which is consistent with past practice in recent commissions of inquiry in British Columbia."<sup>404</sup> Furthermore, the State responded: "it is the view of the Government of British Columbia that the families' interests are best served by having them advanced by a single legal team, which is led by a senior member of the British Columbia Bar."<sup>405</sup>
229. This decision was found to be very problematic by indigenous peoples, sex workers, human rights organizations and women's organizations. The general feeling of these groups was reported to be that of "being effectively shut out of the process."<sup>406</sup> As a result, the organizations that were granted full or limited participation were forced to withdraw from the process due to the lack of funding. NWAC pointed out: "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."<sup>407</sup>

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<sup>400</sup> Applicants accepted as full participants: Families (represented by A. Cameron Ward), Coalition of Sex Worker-Serving Organizations, the Committee of the February 14 Women's Memorial March and the Downtown Eastside Women's Centre, Vancouver Area Network of Drug users, Walk4Justice and Frank Paul Society; Native Women's Association of Canada. Dr. Kim Rossmo. Applicants accepted as limited participants: B.C. Liberties Association, Amnesty International and PIVOT Legal Society, Ending Violence Association of B.C. and West Coast LEAF, Assembly of First Nations, Carrier Sekani Tribal Council and the Union of B.C. Indian Chiefs, Women's Equality & Security Coalition, Native Courtworker and Counselling Association of B.C., The First Nations Summit and CRAB (Water for Life Society). Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*. May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>. See also, State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012.

<sup>401</sup> See also, IACHR, *Hearing on the Situation of the Right to Life of Indigenous Women and Girls in Canada*, 147<sup>th</sup> Period of Sessions, March 12, 2013. The hearing is available at: [www.iachr.org](http://www.iachr.org)

<sup>402</sup> Missing Women Commission of Inquiry, *Ruling on Participation and Funding Recommendations*. May 2, 2011. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

<sup>403</sup> B.C. Civil Liberties Association, West Coast Women's Legal Education and Action Fund, Pivot Legal Society, *Blue Print for an Inquiry: Learning from the Failure of the Missing Women Commission of Inquiry*, 2012.

<sup>404</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 7.

<sup>405</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 73.

<sup>406</sup> B.C. Civil Liberties Association, West Coast Women's Legal Education and Action Fund, Pivot Legal Society, *Blue Print for an Inquiry: Learning from the Failure of the Missing Women Commission of Inquiry*, 2012; Union of British Columbia Indian Chiefs, Letter to Commissioners Robinson and Shelton regarding the visit to Canada, August 7, 2013.

<sup>407</sup> NWAC and FAFIA, *Murders and Disappearances of Aboriginal Women and Girls in Canada*, Briefing paper for Thematic Hearing before the Inter-American Commission on Human Rights, 147<sup>th</sup> Period of Sessions, March 12, 2013.

230. Civil society organizations, indigenous peoples and families of victims raised serious concerns about the fact that although two lawyers were appointed by Commissioner Oppal and funded by the government to represent the families of the murdered women - one to represent “the Downtown Eastside” and one to represent “Aboriginal interest”- they were not selected directly by the victim’s representatives and they “did not have a broader responsibility to advance the systemic concerns of the community at large.”<sup>408</sup> According to the information received, at least 25 lawyers were publicly funded to represent police and government interests and just two in representation of the families.<sup>409</sup> Several civil society organizations pointed out that: “Even if it were possible to avoid an unbalanced outcome, the resource imbalance nonetheless seriously undermined the Commission’s credibility with affected communities.”<sup>410</sup>
231. A common concern raised during the visit was that the MWCI terms of reference were set by the Government without consultation and that the scope was very limited.<sup>411</sup> The focus of the inquiry was the investigation of the Pickton case “without providing for a full examination of the various systemic issues leading to marginalized women’s particular vulnerability to violence, the lack of protections available, or the broader epidemic of missing and murdered indigenous women in British Columbia.”<sup>412</sup> Also, under the terms of reference the inquiry was limited to a certain period time, 1997 to 2002, and a particular place, Vancouver’s DTES. This narrow scope left out other cases that did not take place during that time as well as any analysis of the situation in other parts of the province. Canada indicated that the Government of British Columbia amended the Commission’s terms of reference to include a Study Commission to make the process less formal and more inclusive.<sup>413</sup> The Study Commission reports would assist the Commission in carrying out its mandate to make recommendations about changes respecting the initiation and conduct of investigations in British Columbia of missing women and suspected multiple homicides<sup>414</sup>.
232. In relation to MWCI, NWAC and FAFIA expressed the following:

Both the mandate and the work of the Commission has been criticized for several reasons: 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 and the murders of women by one serial killer, Robert

<sup>408</sup> B.C. Civil Liberties Association, West Coast Women’s Legal Education and Action Fund, Pivot Legal Society, *Blue Print for an Inquiry: Learning from the Failure of the Missing Women Commission of Inquiry*, 2012.

<sup>409</sup> B.C. Civil Liberties Association, West Coast Women’s Legal Education and Action Fund, Pivot Legal Society, *Blue Print for an Inquiry: Learning from the Failure of the Missing Women Commission of Inquiry*, 2012.

<sup>410</sup> B.C. Civil Liberties Association, West Coast Women’s Legal Education and Action Fund, Pivot Legal Society, *Blue Print for an Inquiry: Learning from the Failure of the Missing Women Commission of Inquiry*, 2012, p. 51.

<sup>411</sup> Union of British Columbia Indian Chiefs, Letter to Commissioners Robinson and Shelton regarding the visit to Canada, August 7, 2013.

<sup>412</sup> B.C. Civil Liberties Association, West Coast Women’s Legal Education and Action Fund, Pivot Legal Society, *Blue Print for an Inquiry: Learning from the Failure of the Missing Women Commission of Inquiry*, 2012.

<sup>413</sup> The State indicated that through the Study Commission, the MCWI held community engagement forums in Prince George and Vancouver, community forums in seven Northern B.C. Communities, and public policy forums in Vancouver to focus on improving the safety and security of vulnerable women. The Commission also met with family members of missing and murdered women to hear their stories and to listen to their recommendations and perspectives. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 77.

<sup>414</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 77.

William Pickton; 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 being available to the Commission; 4) its focus was restricted to police and prosecutorial failures, and did not examine 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 live.” The Inquiry report notes that these issues are most worthy of consideration, but are “beyond the scope of the Inquiry.”<sup>415</sup>

233. The Oppal report made 63 recommendations and identified 2 urgent measures. The two urgent measures consisted of a commitment to provide \$750k to WISH Drop-In Centre Society to expand its services to women, and the development of a targeted engagement plan for safer transport options along Highway 16.<sup>416</sup>

## 2. Police oversight mechanisms

234. Despite the irregularities described by families of victims in the handling of the investigations of their missing and murdered loved ones, and the findings of the MWCI, no person has been held accountable. Some civil society organizations described the police as being “out of reach” of any accountability mechanisms.<sup>417</sup> The IACHR was informed that no disciplinary actions could be imposed because almost all of the police officers who were involved in the investigations had retired. Consequently, civil society groups frequently raised the need to modify the Police Act in order to prevent police officers resigning or retiring in order to avoid charges.
235. In this regard, Canada indicated that police officers are held accountable for their actions through three distinct processes: 1) review by a civilian public complaints body responsible for overseeing public complaints; 2) professional standards investigations internal to the police service; and 3) criminal investigations of serious incidents (e.g., serious injury or death) conducted by a provincial special investigations unit, if such a unit exists, or by a separate police service.<sup>418</sup>
236. The Canadian State has indicated that each province has its own civilian public complaints body that handles public complaints against municipal/provincial police conduct in its

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<sup>415</sup> Native Women’s Association of Canada, and Canadian Feminist Alliance for International Action, “*Murdered and Disappearances of Aboriginal Women and Girls in Canada*”, Information Update for the United Nations Committee on the Elimination of Discrimination Against Women, June 25, 2013, p. 26. Available: <http://fafia-afai.org/wp-content/uploads/2012/03/CEDAWreportJune252013.pdf>

<sup>416</sup> Updated information provided by the Canadian State on July 2, 2013.

<sup>417</sup> Meeting with civil society organizations. Vancouver and Prince George, August 2014.

<sup>418</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 165.

jurisdiction. However, public complaints against RCMP members performing municipal/provincial/territorial functions under contract with provinces/territories/municipalities, regardless of the jurisdiction, are reviewed by the Commission for Public Complaints against the RCMP.<sup>419</sup>

### 3. Commission for Public Complaints

237. The Commission for Public Complaints (“CPC”) has jurisdiction over complaints from a member of the public concerning the conduct of an RCMP officer in the performance of a policing duty or police function.<sup>420</sup> The CPC conducts hearings and investigations into complaints and reports findings and recommendations to the RCMP Commissioner and the Minister of Public Safety. The recommendations are geared toward correcting policing problems and preventing their recurrence.<sup>421</sup>
238. Any contravention of the RCMP Act is subject to informal and formal disciplinary actions. The State indicated that complaints made against members or persons appointed or employed under the RCMP Act or against the RCMP are examined promptly and impartially reported, recorded and disposed of in accordance with RCMP directives or by the CPC.<sup>422</sup>
239. On June 20, 2012, the Minister of Public Safety introduced Bill C-42, Enhancing Royal Canadian Mounted Police Accountability Act, in the House of Commons. The proposed legislation will create a new Civilian Review and Complaints Commission (CRCC) for the RCMP to replace the existing CPC.<sup>423</sup> According to the information provided by the State, the CRCC will have all of the powers of the CPC in addition to new powers and authority, such as access to RCMP information, enhanced investigative powers, authority to appoint civilian observers to assess the impartiality of criminal investigations related to serious incidents, and the ability to conduct policy reviews of RCMP regulatory compliance.<sup>424</sup>
240. During the visit, the delegation was informed that even complaints that are later referred to an external investigator, such as the CPC, are generally plagued by concerns about independence, credibility, transparency, and the fact that decisions are not binding on the RCMP’s Commissioner. The processes were described by civil society organizations as “very ineffective.”

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<sup>419</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, paras. 167-170.

<sup>420</sup> These duties include criminal investigations, public campaign investigations, policing public events, security assignment and intelligence operations. State of Canada. Royal Canadian Mounted Police, *Best Practices, Contract and Aboriginal Policing*, August 2013.

<sup>421</sup> Each province has its own civilian public complaints body that handles public complaints against municipal/provincial police conduct in its jurisdiction. However, public complaints against RCMP members performing municipal/provincial/territorial functions under contract with provinces/territories/municipalities, regardless of the jurisdiction, are reviewed by the Commission for Public Complaints against the RCMP. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, paras. 167 and 170.

<sup>422</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para.169.

<sup>423</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 172.

<sup>424</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 173.

## 4. Independent Investigations Office

241. The Independent Investigations Office (“IIO”) is a civilian-led investigatory body established under amendments to British Columbia’s Police Act that came into effect in July 2011. It became officially operational on September 10, 2012. The IIO’s mandate is to investigate police-related incidents that lead to death or serious harm as defined in Part 11 of the Police Act. This means injury that “(a) may result in death; (b) may cause serious disfigurement, or (c) may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ.” In this regard many civil society groups raised concern about the limited mandate of the IIO to investigate cases of violence against women given that allegations of rape and sexual abuse may be understood as not falling within this mandate.
242. At the end of the investigation, if the Chief Civilian Director “considers that an officer may have committed an offense under any enactment, including an enactment of Canada or another province” as per s.38.11 of the Police Act, he must forward the case to Crown counsel for potential prosecution. Crown counsel then makes the decision on whether to prosecute based on the likelihood of conviction and whether prosecution is in the public interest. If the Chief Civilian Director does not bring the case before Crown counsel, he or she may release a public report documenting the investigation and how this conclusion was reached.
243. Most of the civil society groups with whom the IACHR delegation met in B.C. have high expectations for the role of the IIO as an independent body to hold members of the police accountable for their wrongdoings.<sup>425</sup> However, the functions of the IIO are still new. The IACHR delegation was informed that before January 1, 2015, a special committee of the British Columbia legislative assembly will review its operations.

## C. Prevention, Awareness, Education and Victim Services

### 1. Data collection

244. Although high numbers of missing and murdered indigenous women in Canada have been identified at both the national and international levels, there are no trustworthy statistics that could assist in reaching a fuller understanding of this problem. Canada recognized the 582 cases of missing and murdered indigenous women and girls from the mid-1970s to 2008 identified by NWAC in the report “What their Stories Tell Us” as “of great interest to law enforcement and justice officials.”<sup>426</sup> Moreover, in May 2014, the RCMP released a report in which it documented that police-recorded incidents of indigenous female homicides and unresolved missing indigenous females amounted to 1,181, a higher number than the estimated figures.<sup>427</sup> According to the Government of Canada, this report provides the most

<sup>425</sup> The IACHR was informed that the following organizations Justice For Girls, Poverty and Human Rights Centre, Women against Violence against Women (WOVAW) and the West Coast Legal Education and Action Fund (West Coast Leaf), no longer recommend that the BC IIO have the mandate to investigate sexual assaults perpetrated by police as they consider that IIO efforts have failed to meet the need. They recommend that these should be handled by an independent investigative body, comprised of and led by women.

<sup>426</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 37. Meeting with government officials, Vancouver.

<sup>427</sup> RCMP, *Missing and Murdered Aboriginal Women: A National Operational Overview*, 2014.

comprehensive, reliable analysis of police-reported incidents of missing and murdered indigenous women in Canada.<sup>428</sup> According to the National Operational Review, there are 225 unsolved cases of either missing or murdered indigenous women: 105 missing for more than 30 days as of November 4, 2013, and 120 unsolved homicides between 1980-2012.

245. According to the report, “missing and murdered Aboriginal women are over-represented vis-à-vis their proportion of the Canadian population. Aboriginal women accounted for 16% of female homicides and 11.3% of missing women. This is three to four times higher than the representation of Aboriginal women in the Canadian population which is 4.3%.”<sup>429</sup> In its observations on this report, the Canadian State reported that the findings in the RCMP’s Report confirm the over-representation of indigenous women in homicide statistics.<sup>430</sup>
246. The report indicated that there are 181 missing and murdered indigenous women in Canadian police databases: 164 missing (dating back to 1952) and 1,017 murdered (between 1980 and 2012). It establishes that almost 9 out of 10 murders of indigenous women are resolved across Canadian law enforcement jurisdictions (897 out of 1,017). That leaves 120 homicide cases and 105 missing cases.<sup>431</sup>
247. In a response to an IACHR request for information, the Canadian State indicated that “unfortunately there are no reliable state statistics with regard to the number of missing and murdered Indigenous women in Canada”.<sup>432</sup> Statistics Canada, the national statistics office, collects information on all homicides that occur in Canada, but it does not collect information on missing women.<sup>433</sup> In this regard, in the MWCI Report, Commissioner Oppal indicated “the lack of statistics is partially explained by the fact that for an adult to be missing it’s not a crime, and therefore data is not compiled by Statistics Canada.”<sup>434</sup>
248. Official statistics from the Homicide Survey only include homicides that have been recorded by police and do not include unconfirmed reports, such as the case of missing women.<sup>435</sup> The Homicide Survey is an administrative survey where police report annual data on every homicide in Canada that comes to their attention.<sup>436</sup> It collects detailed information on

<sup>428</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>429</sup> RCMP, *RCMP releases National Operational Review on Missing and Murdered Aboriginal Women*, May 16, 2014. Available at: <http://www.rcmp-grc.gc.ca/news-nouvelles/2014/05-16-eng.htm>

<sup>430</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>431</sup> RCMP, *RCMP releases National Operational Review on Missing and Murdered Aboriginal Women*, May 16, 2014. Available at: <http://www.rcmp-grc.gc.ca/news-nouvelles/2014/05-16-eng.htm>

<sup>432</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012.

<sup>433</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 40.

<sup>434</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 19. Available at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>

<sup>435</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012; Juristat Article. *Measuring violence against women: Statistical trends*, Edited by Maire Sinha Canadian Centre for Justice Statistics, Released on February 25, 2013, p. 19. Available at <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>

<sup>436</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 40.



the characteristics of the incident, the victims and the accused.<sup>437</sup> The “Aboriginal” status of homicide victims is not consistently reported or recorded in the Homicide Survey, and disappearances are not reported in either survey.<sup>438</sup>

249. From a national perspective, the State indicated to the IACHR that the RCMP has undertaken a review of its own files from divisions across Canada. The review indicated that, as of February 2013, there were 36 on-going investigations dating back to 1940 on missing indigenous women in which foul play had not been ruled out. With regard to murdered indigenous women, records dating back to 1932 validate 327 homicides, 98 of which are still under investigation.<sup>439</sup> These numbers would provide a historical solve rate of 70% of indigenous women homicides occurring in RCMP jurisdictions.<sup>440</sup> Notwithstanding this, the State has expressed that “these numbers almost certainly under-represent the true number of cases and the actual number of missing and murdered women is higher than these numbers, since these numbers only include files held by the RCMP and not those held by provincial and municipal law enforcement agencies across the country.”<sup>441</sup>
250. The State has indicated that although the Commissioner of the RCMP has reached out to the Chiefs of Police in other jurisdictions to ensure that they are tracking this issue, a full consolidation is not yet being undertaken and, given that the ethnicity of victims is not always disclosed or evident, the numbers are not definitive.<sup>442</sup> On another note, the IACHR was informed that in February 2014, the B.C. Minister of Justice introduced a new Missing Persons Act that will broaden police authority to obtain records and information to assist with a search for a missing person.<sup>443</sup>

### *a. Lack of disaggregated data*

251. Civil society organizations have repeatedly indicated that there is no reliable source of disaggregated data on violence against indigenous women and girls because police across Canada do not consistently report or record whether the victims of violent crime are indigenous.<sup>444</sup> The State has recognized that “data collection is an ongoing challenge in addressing the issue of missing and murdered women.”<sup>445</sup>

<sup>437</sup> Data that can be provided by police include the age, sex and the Indigenous identity of both the victim and the accused. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 40.

<sup>438</sup> NWAC, Canadian Feminist Alliance for International Action, University of Miami School of Law, Human Rights Clinic, Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>439</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada. State of Canada, RCMP follow up response to IACHR questions on Missing and Murdered Indigenous Women during the visit.

<sup>440</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada.

<sup>441</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada.

<sup>442</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada.

<sup>443</sup> In its observations on this report, Canada reported that the Missing Persons Act received Royal Assent on March 24, 2014. State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex D, October 30, 2014. The State affirmed that this Act will support advances in this crucial area.

<sup>444</sup> NWAC, Canadian Feminist Alliance for International Action, University of Miami School of Law, Human Rights Clinic, Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada*, 144<sup>th</sup> Period of Sessions, March 28, 2012.

<sup>445</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012

252. The State affirmed that law enforcement agencies across Canada do not generally collect statistical information based on race or ethnicity.<sup>446</sup> Cases are processed and investigated without regard to the race or ethnicity of the victim. The State indicated that given the challenges the police face in determining whether a victim or accused person is an indigenous person, as well as potential conflicts with privacy legislation in various jurisdictions, a number of police services have refused to collect any information on indigenous identity.<sup>447</sup>
253. The IACHR was informed that in compliance with its policy on Bias-Free Policing, the RCMP “does not as a standard practice record the ethnicities of victims of crime, unless those details are specifically provided by the victim or family.”<sup>448</sup> However, the RCMP indicated that the Bias Free Policing policy does not preclude the RCMP from legitimately using relevant information or examining behavior in order to support police actions against criminal or potential criminal activity.<sup>449</sup> The State reported that:

There are a number of challenges in gathering race-related data during investigations. Data integrity is reliant on self-identification and a police officer's verification or perception of visible characteristics or traits. Front-line officers will not always be in a position to know the race and culture of an individual who is missing or murdered, and making a judgment merely on the physical appearance of an individual would not ensure the integrity of the data collected. However, where the information is reliably available, for instance, in the case of an individual with registered Indian status, or where the information is provided by family members, it can be entered into records.<sup>450</sup>

254. The State also indicated that with these challenges in mind, and noting the particular relevance of race to missing persons investigations, the RCMP is currently amending its National Policy regarding missing persons investigations so that the RCMP investigations will be required to capture ethnicity in the Records Management System.<sup>451</sup>

### ***b. Limitations of the Canadian Police Information Centre (CPIC) data collection system.***

255. The Canadian Police Information Centre (CPIC) data collection system is a real-time system available on a 24/7 basis, 365 days per year to provide investigative assistance to law enforcement and support agencies across Canada and around the world.<sup>452</sup> It is used for investigational purposes rather than for statistical purposes. Consequently, missing person

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<sup>446</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada.

<sup>447</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012.

<sup>448</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada.

<sup>449</sup> State of Canada, RCMP follow up response to IACHR questions on Missing and Murdered Aboriginal Women during visit.

<sup>450</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada.

<sup>451</sup> State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada and by RCMP.

<sup>452</sup> Over the last few years, CPIC has collaborated with the Canadian Strategy on Missing Persons & Unidentified Remains (CSMPUR) led by the Canadian Association of Chiefs of Police to make 27 enhancements to the CPIC system. State of Canada, RCMP follow up response to IACHR questions on Missing and Murdered Aboriginal Women during visit.

records in the CPIC are constantly being added, modified or removed, and the numbers therefore only reflect what is in the system at a given time.<sup>453</sup>

256. The State further indicated that in May 2011 several new fields were added to the Missing and Unidentified Remains category in CPIC, including Biological Affinity and Cultural Affinity. These will remain as optional categories to enter.<sup>454</sup>

### *c. Other sources for statistics*

257. The IACHR was informed that in January 2013, the RCMP launched a national website, entitled “Canada’s Missing”, which provides profiles of missing children, missing persons and unidentified remains in Canada. It also gives the public the opportunity to provide tips on cases of missing persons.<sup>455</sup>
258. The Violence Crime Linkage Analysis System (ViCLAS) is a national database used by all Canadian Law Enforcement Agencies for tracking violent offenders and the offenses they commit. ViCLAS is an investigative aid specifically designed to assist police agencies in identifying violent crimes that may be serial in nature and permits the analysis and linkage of such cases based on the behavior exhibited by the offender while he/she is with the victim.<sup>456</sup> According to the State this system does capture ethnicity.<sup>457</sup>

## **2. Training**

259. The State has informed the IACHR of certain initiatives in relation to training. The State indicated that, in 2010, the Government of Canada announced federal funding to help the provinces adapt or develop culturally-appropriate victim services for indigenous peoples in order to increase the provinces’ capacities to support indigenous victims of crime.<sup>458</sup> In many jurisdictions, victim services are taking an active response to adapt existing services and/or develop new services to respond to the unique needs of indigenous victims of crime.<sup>459</sup> Some of these coordinated efforts to increase program responsiveness to the specific needs of indigenous victims are advanced in collaboration with the federal government, whereas others are driven and funded by the relevant provincial and territorial governments.<sup>460</sup>

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<sup>453</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012; State of Canada, *Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit*, provided by Public Safety Canada.

<sup>454</sup> The options provided to the investigator for Biological Affinity are ‘Aboriginal’, ‘Black’, ‘East Indian’, ‘Oriental/Asian’, ‘White’, ‘Other’ or ‘Unknown’, and a more specific description may be entered under Cultural Affinity. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012; State of Canada, *RCMP follow up response to IACHR questions on Missing and Murdered Aboriginal Women during visit*.

<sup>455</sup> State of Canada. *Royal Canadian Mounted Police, Best Practices, Contract and Aboriginal Policing*, August 2013.

<sup>456</sup> State of Canada, *RCMP follow up response to IACHR questions on Missing and Murdered Aboriginal Women during visit*. State of Canada. *Royal Canadian Mounted Police, Best Practices, Contract and Aboriginal Policing*, August 2013.

<sup>457</sup> State of Canada, *RCMP follow up response to IACHR questions on Missing and Murdered Aboriginal Women during visit*.

<sup>458</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 246.

<sup>459</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 247.

<sup>460</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 247.

260. Canada affirmed that together with the provincial and territorial governments it is working in consultation with Aboriginal people and organizations, such as NWAC, to improve the police response to missing and murdered Aboriginal women and girls.<sup>461</sup> As an example provided by the State, the RCMP partnered with NWAC on a poster to increase awareness of safety measures for individuals who hitchhike. The poster campaign was launched in August 2013.<sup>462</sup> In addition the RCMP National Aboriginal Policing Services has a member dedicated to liaise with indigenous peoples and organizations that represent them, including NWAC. This partnership has led to the development of a community education tool kit, entitled “Navigating the Missing Persons Process.”<sup>463</sup> This toolkit can be found in NWAC’s Community Resource Guide designed to assist friends and family of missing persons, entitled “What Can I Do to Help the Families of Missing and Murdered Aboriginal Women and Girls.”<sup>464</sup> The State also informed the IACHR that in December 2011, the RCMP and the Assembly of First Nations signed a joint agreement that will see the two organizations working collaboratively on issues related to missing and murdered Aboriginal persons.
261. The National Centre for Missing Persons and Unidentified Remains (NCMPUR) has compiled investigative Best Practices in consultation with various law enforcement agencies as well as with Chief Coroners/Medical Examiners in Canada. The NCMPUR is currently working with the Canadian Police College to develop training for missing persons and unidentified remains investigators. The first Advanced Missing Persons & Unidentified Remains Investigators Course was held in March 2012.<sup>465</sup> In its observations on this report Canada provided further information about RCMP’s National Missing Persons Strategy 2014.<sup>466</sup> The goal of the Strategy is to provide a foundation for missing person investigations focusing on: demonstrating accountability, entering partnerships, supporting families and increasing awareness.<sup>467</sup>
262. For its part, the RCMP has a policy that directs its units to participate in multi-agency community-based initiatives or programs to reduce the incidence of violence in relationships, improve public awareness, and develop protocols for responding to violence in relationships.<sup>468</sup> The RCMP has implemented a mandatory online training course, “Aboriginal and First Nations Awareness Training” for all new members and for all employees of the RCMP in the northern territories. Aboriginal and First Nations Awareness training provides a foundational understanding of the history of Canada’s Aboriginal peoples and includes the impact of colonialism, residential schools and the Aboriginal peoples’ unique position within

<sup>461</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 282.

<sup>462</sup> State of Canada. *Royal Canadian Mounted Police, Best Practices, Contract and Aboriginal Policing*, August 2013.

<sup>463</sup> NWAC, *Toolkit: Navigating the Missing Persons Process*. Available at: [www.nwac.ca/sites/default/files/imce/NWAC\\_2B\\_Toolkit\\_e.pdf](http://www.nwac.ca/sites/default/files/imce/NWAC_2B_Toolkit_e.pdf)

<sup>464</sup> NWAC, *Community Resource Guide: What can I do to help the Families of Missing and Murdered Aboriginal Women and Girls?* Available at: [www.nwac.ca/programs/community-resource-guide-what-can-i-do-help-families-missing-and-murdered-Aboriginal-women-](http://www.nwac.ca/programs/community-resource-guide-what-can-i-do-help-families-missing-and-murdered-Aboriginal-women-)

<sup>465</sup> In addition, the NCMPUR is in discussions with the Canadian Police Knowledge Network to examine specific online training possibilities with a view to making basic training more readily accessible to law enforcement agencies across the country.

<sup>466</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex C, October 30, 2014.

<sup>467</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex C, October 30, 2014.

<sup>468</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 281.

Canada's social structure.<sup>469</sup> Also, RCMP members are provided training through the *Domestic Violence Investigations* course. The e-learning course is a risk-focused evidence-based course that encourages officers to take a proactive and collaborative approach to promoting and managing victim safety.

263. The State indicated that understanding indigenous issues helps employees provide a more culturally appropriate policing service which contributes to safe and healthy Aboriginal communities. The RCMP has developed awareness and sensitivity training for front line RCMP officers and employees to assist in the understanding of indigenous people in Canada. The training focuses on awareness of indigenous culture, spirituality and perceptions of law and justice and encourages bias free interaction through these aspects of awareness.<sup>470</sup> For example, there is a bias-free policing awareness module held at the outset of the 24-week RCMP Cadet Training Program (CTP).<sup>471</sup>

### 3. Services

264. The State reported a number of services both at the federal and provincial level for indigenous women. Regarding legal aid and public funding available to indigenous women to participate in criminal, civil and administrative processes related to disappearances and murders at all State levels, the State of Canada pointed out that the federal government provides financial support to provinces and territories toward the costs of criminal legal aid in the provinces, and criminal and civil legal aid in the territories.<sup>472</sup> The core objective of the legal aid program is to promote fair legal proceedings and to ensure access to justice for economically disadvantaged persons, including youth, women and Aboriginal persons.<sup>473</sup>
265. Canada also provided information on legal aid societies and commissions (one in each province and territory). These were created by provincial and territorial statutes to deliver publicly funded legal aid services.<sup>474</sup> The provinces and territories are responsible for the management and delivery of legal aid services and the federal government shares in the delivery costs.<sup>475</sup> The specific requirements for using these programs differ from jurisdiction to jurisdiction, but their purpose is the same: to facilitate individuals' access to legal services where necessary.<sup>476</sup>
266. The IACHR also received information on the Aboriginal Courtwork Program, funded by the Government of Canada. This program is aimed at helping indigenous people involved in the

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<sup>469</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 297.

<sup>470</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 299.

<sup>471</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 298.

<sup>472</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 53.

<sup>473</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 53.

<sup>474</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 54.

<sup>475</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 54.

<sup>476</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 54.

justice system obtain fair, just, equitable and culturally sensitive treatment.<sup>477</sup> Courtworkers serve as a “bridge” between criminal justice officials and Aboriginal people and communities, by providing a liaison function, facilitating communication, and promoting understanding. This includes assisting criminal justice personnel in order for them to become familiar with local community justice programs and services.<sup>478</sup>

267. Canada also referred to the funding of public legal education and information services.<sup>479</sup> These services are intended to provide information about the justice system, and laws that may affect individuals, in a form that is timely and appropriate to different needs and cultural identities, and made accessible through a variety of delivery mechanisms and media.<sup>480</sup>
268. Despite the information received, the IACHR notes that in the response to the Universal Periodic Review report submitted by Canada in 2013, the British Columbia CEDAW Group<sup>481</sup> reported that legal aid is in crisis in British Columbia. Courts, lawyers’ associations and non-governmental organizations have all raised concerns about legal aid and access to justice.<sup>482</sup> The cut in legal aid services in BC by 40% in 2002, the increase in legal costs in Canada, the underfunding, and the fragmentation of the coverage have been mentioned to the IACHR as barriers in access to justice, which disproportionately affect indigenous women and who are among Canada’s low-income population.<sup>483</sup> In its observations on this report, the Government of Canada informed about the increase in funding for legal aid by 2.1 million annually starting in 2012/2013 and a further \$2 million in 2014/2015, which is included as an annual increase in the government’s three year service plan budget “to develop new and innovative ways of delivering legal aid and services.”<sup>484</sup> The State also indicated that the report on Legal Aid in Canada from Statistics Canada shows that annual changes in per capita funding of legal aid are consistent between BC and other provinces at an average increase of about three per cent.<sup>485</sup> In addition, BC does not require contributions from legal aid users and legal aid is available at no cost to financially eligible clients. Canada indicated that the Legal Services Society provides legal services to clients facing criminal or serious family situations, including child protection matters.<sup>486</sup>

<sup>477</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 56.

<sup>478</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 56.

<sup>479</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 57.

<sup>480</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 57.

<sup>481</sup> The British Columbia CEDAW Group a coalition of women’s non-governmental and non-profit British Columbia organizations that are committed to advancing the equality interests of women and girls.

<sup>482</sup> UN, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to the Human Rights Council, A/HRC/WG.6/16/CAN/3*, 29 January 2013.

<sup>483</sup> See also, Canadian Centre for Policy Alternatives (CCPA), available at: <https://www.policyalternatives.ca/publications/commentary/bc%E2%80%99s-publicly-funded-legal-aid-crisis>; Global BC, *Access to Justice and Legal Aid Crisis in BC*, March 14, 2014, available at: <http://globalnews.ca/video/1207679/access-to-justice-and-legal-aid-crisis-in-bc/>. See also the Canadian Bar Association, *Legal Aid in Canada*, available at: <http://www.cba.org/CBA/Advocacy/legalAid/>

<sup>484</sup> State of Canada, *Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada*. Note PRMOAS – 0232, Annex D, October 30, 2014.

<sup>485</sup> State of Canada, *Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada*. Note PRMOAS – 0232, Annex D, October 30, 2014.

<sup>486</sup> State of Canada, *Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada*. Note PRMOAS – 0232, Annex D, October 30, 2014.

269. The State indicated that the province of British Columbia provides more than \$70 million annually for services to victims of violence.<sup>487</sup> There are over 400 contracted front-line services for victims of crime and for women and children fleeing violence, including over 250 programs addressing violence against women. Also, more than 160 Victim Service Programs across British Columbia provide emotional support, information, referrals, justice system support and safety planning for victims, including victims of family and sexual violence.<sup>488</sup> In addition to 38 programs that serve reserves, individual First Nations, and areas with a high Aboriginal population, there are 14 government-funded programs specifically designed to serve Aboriginal victims of violence, including: community-based victim service programs, Stopping the Violence Counselling Programs, Children Who Witness Abuse Counselling Programs, and Outreach Programs.<sup>489</sup> To assist this, the B.C. government has partnered with the federal government to fund Indigenous Cultural Competency training over a period of 2 years to ensure that victim service providers have a “greater appreciation for Aboriginal culture” and are familiar with the history of colonialism and issues such as residential schools.<sup>490</sup>
270. The B.C. government funds the Domestic Violence Helpline/VictimLink B.C., a toll-free, 24/7 helpline that provides immediate crisis support to victims in 130 languages and dialects, including 17 North American Aboriginal languages.<sup>491</sup> The B.C. government indicated that it is developing an Off-reserve Aboriginal Action Plan (ORAAP) to improve socio-economic outcomes for indigenous people living off-reserve in B.C. In its response to the IACHR’s report, Canada provided information about the British Columbia’s Provincial Office of Domestic Violence that has recently released a 3 year domestic violence plan.<sup>492</sup> According to Canada, the provincial plan was the result of extensive consultation with government and community anti-violence partners and consultations with First Nations, Métis and indigenous communities and organizations. The plan sets out four primary areas of work: direct services for women, children and men; direct services for indigenous children, youth and families; direct services for perpetrators of domestic violence; and direct services in rural/remote communities.<sup>493</sup>
271. Additionally, the State informed on the Employment Program of B.C., which is delivered through 73 contracts around the province, provides services to help women who have been victims of violence and/or abuse and women leaving the sex trade.<sup>494</sup>

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<sup>487</sup> Updated information provided by the Canadian State on July 2, 2013.

<sup>488</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 249.

<sup>489</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 250.

<sup>490</sup> Updated information provided by the Canadian State on July 2, 2013.

<sup>491</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 251, Updated information provided by the Canadian State on July 2, 2013.

<sup>492</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex D, October 30, 2014.

<sup>493</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex D, October 30, 2014.

<sup>494</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 272.

## 4. Law Reform

272. Regarding law reform, the State referred to the enactment of the Family Homes on Reserves and Matrimonial Interests or Rights Act (Bill S-2). Until the enactment of Bill S-2, indigenous women have been vulnerable to inequitable distribution of marital property. The Indian Act provided no guidance on matrimonial real property rights, and the provincial and territorial law on the matter cannot be applied on reserves. As a result, there were no protections in place for women and children in these cases, where the end of a relationship could lead to poverty, homelessness, and insecurity.
273. On June 19, 2013, royal assent was given to Bill S-2, which provides federal rules on this matter for First Nations that do not have their own laws on marital property.<sup>495</sup> The Act has been criticized by some civil society groups and indigenous peoples for failing to address the concerns raised by indigenous advocates. Some of the concerns emphasized are the prescriptive rules that fail to adequately support indigenous institutions, lack of respect for First Nations values, a transition period that is insufficient for the changes that need to be made, and the concern that relying on provincial courts could hamper access to a remedy when they are too costly or remote to be easily accessible.<sup>496</sup>
274. On another note, during its visit the delegation was informed about important modifications made to the Canadian Human Rights Act, and therefore to the work of the Canadian Human Rights Commission.<sup>497</sup> The Canadian Human Rights Commission has jurisdiction pursuant to the Canadian Human Rights Act over federally regulated service providers and employers.<sup>498</sup> This means that the Canadian Human Rights Commission has a mandate to receive complaints from individuals or groups of individuals – or to initiate a complaint itself – where there are reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice in the course of employment or the provision of a service.<sup>499</sup>
275. In June 2008, Section 67 of the Canadian Human Rights Act became applicable to federal government actions taken pursuant to the Indian Act. Until then, Section 67 prevented persons, often indigenous women and persons living or working on reserves, from making complaints of discrimination arising from actions taken or decisions made pursuant to the *Indian Act*.<sup>500</sup> The effect of section 67 was that some actions carried out by the Government of Canada or a First Nation government could not be the subject of a discrimination complaint

<sup>495</sup> For more information please visit Government of Canada, Aboriginal Affairs and Northern Canada: <http://www.aadnc-aandc.gc.ca/eng/1317172955875/1317173115233>

<sup>496</sup> Native Women's Association of Canada, *Bill S-2: Family Homes on Reserves & Matrimonial Interests or Rights Act*, November 21, 2011. Available at: <http://www.nwac.ca/bill-s-2-family-homes-reserves-matrimonial-interests-or-rights-act>

<sup>497</sup> The Canadian Human Rights Commission was established in 1977 by Parliament through the Canadian Human Rights Act. It is Canada's national human rights institution and it has a broad mandate to promote and protect human rights. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 19; Submission of the Canadian Human Rights Commission to the Committee on the Elimination of Discrimination Against Women, February 2013.

<sup>498</sup> Submission of the Canadian Human Rights Commission to the Committee on the Elimination of Discrimination Against Women, February 2013.

<sup>499</sup> Submission of the Canadian Human Rights Commission to the Committee on the Elimination of Discrimination Against Women, February 2013

<sup>500</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 21; Government of Canada, Aboriginal Affairs and Northern Development Canada. *Canadian Human Rights Act – Repeal of Section 67*. Available at: <http://www.aadnc-aandc.gc.ca/eng/1100100032544/1100100032545>



under the Canadian Human Rights Act.<sup>501</sup> The recent legislation added to the Canadian Human Rights Act an interpretive provision requiring that First Nations legal traditions and customary laws – particularly the balancing of individual and collective rights and interests – be taken in consideration in applying the Canadian Human Rights Act to First Nations government, to the extent these traditions and customary laws are consistent with the principle of gender equality.<sup>502</sup>

## 5. Measures to promote participation and indigenous women in public policy

276. In June 2011 the Minister of Aboriginal Affairs of B.C. established an Advisory Council on Aboriginal Women (MACAW). It is composed of indigenous women chosen by the Minister. In its response to the IACHR report, the Government of Canada reported that MACAW was created as a result of the B.C. government’s co-host role at the Collaboration to End Violence: National Aboriginal Women’s Forum in June 2011.<sup>503</sup> According to Canada, the overarching role of the Council is to provide advice to the government on how to improve the quality of life for indigenous women across B.C.<sup>504</sup> In September 2013, MACAW issued a direction to the Government entitled: “Taking Action to End Violence and Improve the Lives of Aboriginal Women in British Columbia.” The establishment of MACAW offers an opportunity for indigenous women to advise the Minister; however, it is unclear how seriously their advice will be taken into account. Further, Canada informed the IACHR that the Province of BC is providing \$400,000 to the Giving Voice initiative, to help indigenous communities to “speak out and take action on the issue of violence against women and girls.”<sup>505</sup>

## 6. Measures to tackle structural discrimination

277. The State reported a wide array of initiatives that are being implemented across the country by Federal Ministries including Public Safety Canada, Status of Women Canada, Department of Justice, and Aboriginal Affairs and Northern Development Canada aimed at reducing the risks from violence faced by indigenous women and girls.
278. For example, Public Safety Canada is supporting the development of community safety plans by indigenous peoples aimed at reducing violence and improving the safety of Aboriginal

<sup>501</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 21.

<sup>502</sup> The Canadian Human Rights Commission established a program called the National Aboriginal Initiative to provide particular attention to the needs and circumstances of indigenous communities as they related to the Canadian Human Rights Act. The Canadian Human Rights Commission has identified some challenges in the context of indigenous women accessing this mechanism. Some of these are: historical distrust of government and government agencies; skepticism among indigenous peoples as to whether this mechanism is the right venue to advocate for their rights, need to train staff with indigenous legal traditions and customs, and lack of accessibility because of barriers in language, literacy, cultural appropriateness, especially where knowledge is transmitted through oral traditions. State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, paras. 24-25. See also Submission of the Canadian Human Rights Commission to the Committee on the Elimination of Discrimination Against Women, February 2013.

<sup>503</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex D, October 30, 2014.

<sup>504</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex D, October 30, 2014.

<sup>505</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex D, October 30, 2014.

women within their communities. This program directly benefits indigenous peoples who apply for assistance to develop community safety plans. In addition, Public Safety Canada engaged in a process to map best and promising practices for engaging Aboriginal urban populations in strategic integrated planning.<sup>506</sup>

279. The State indicated that, since 2007, Status of Women Canada has approved over \$15 million in funding for projects to empower indigenous women and girls to address the issues of violence they face, build economic security, and gain leadership skills. With respect to projects that specifically address violence against indigenous women and girls, SWC has committed more than \$5.6 million in funding over the past two years. In February 2011, SWC approved funding of \$1.89 million over three years to NWAC for a project titled *Evidence to Action II (ETA II)*. The goal of this 36-month project is to reduce the levels of violence experienced by indigenous women and girls in communities across Canada. The project builds on the previous phase, *Evidence to Action I*, which received \$500,000 in 2010 to develop tools and strategies to empower indigenous communities as well as individual girls and women to break the cycle of violence. *Evidence to Action I* built on the earlier *Sisters in Spirit* research initiative, which the State reports successfully raised awareness of the violence and its impacts, explored the root causes and identified measures for addressing it.<sup>507</sup>
280. The Department of Justice Canada has also provided funding to community organizations as part of its overall efforts to reduce violence and improve safety for indigenous women and girls.<sup>508</sup> The Department of Justice is also investing in the development of a national compendium of “best practices” to help Aboriginal communities and groups improve the safety of indigenous women across the country. The best practices will be developed in the areas of: violence reduction, indigenous community development, victim services, and law enforcement.
281. For its part, the Ministry of Aboriginal Affairs and Northern Development Canada (AANDC) funds a number of ongoing initiatives including the Family Violence Prevention Program, the First Nations Child and Family Services Program, the Northern and Aboriginal Crime Prevention Fund, and the Youth Gang Prevention Fund.<sup>509</sup> The State reported on measures undertaken to improve policing responses to incidents of violence against indigenous women and children. As examples, the State made reference to the RCMP’s national policy on violence in relationships, which requires swift police intervention to protect victims. All complaints of violence in relationships must be investigated and documented. The onus is on the police to lay charges or recommend charges where there are reasonable and probable grounds to

<sup>506</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 211.

<sup>507</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, paras. 217-218.

<sup>508</sup> Indigenous and community groups who work in the area of violence prevention and victim services are eligible to receive funding to support the development of school-based and community programs that aim to reduce the vulnerability to violence of high-risk young indigenous women and girls by promoting resilience and alternatives.

<sup>509</sup> The Family Violence Prevention Program (FVPP) provides funding to assist First Nations in providing access to culturally appropriate family violence shelter services and prevention activities to women, children and families ordinarily resident on-reserve. The Family Violence Prevention Program administered by AANDC provides operational funding to a network of 41 shelters in First Nations communities, as well as support for community-based prevention projects. According to the State, ensuring shelter services and violence prevention programming are available to on-reserve communities is an important element to address the family violence that threatens the ability to safely raise a family. The Government of Canada’s Family Violence Initiative provides ongoing annual funding to eight federal departments, including \$1.9 million to the Canada Housing and Mortgage Corporation (CMHC) for the Shelter Enhancement Program.

believe that an offence has been committed, removing the onus from victims who may feel threatened or intimidated by their aggressor.<sup>510</sup>

282. In its observations on this report, the Canadian State informed the IACHR about its Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls, which was released in September 2014.<sup>511</sup> According to Canada, this Action Plan is the Government's response to the recommendations issued by the Parliamentary Special Committee on Violence Against Indigenous Women. The Government of Canada reports that the plan was informed by engagement with indigenous leaders, families and communities, and takes into account the actions required to better meet the needs of victims and families across the country.<sup>512</sup>
283. According to Canada, building on lessons learned through the Government's seven step strategy between 2010 and 2015, and recognizing the complex factors that contribute to these violent crimes, the five-year Plan brings together actions under the following pillars: (i) preventing violence by supporting community level solutions; (ii) supporting indigenous victims with appropriate services; and (iii) protecting indigenous women and girls by investing in shelters and continuing to improve Canada's law enforcement and justice systems.<sup>513</sup> This includes an investment of \$25 million over five years, as well as investments in shelters and prevention activities on-reserve, a DNA Missing Persons Index, and initiatives to support indigenous women and girls to be full participants in a strong Canadian economy.<sup>514</sup> The Government indicated that, overall, the measures reflected in the Action Plan will result in an investment by the Canadian Government of approximately \$200 million over five years. To oversee its implementation, the Government has established a high-level oversight committee to ensure coordination of federal actions, and to monitor and prepare regular reports on progress.<sup>515</sup>
284. In addition to these federal initiatives, regarding housing, the province of B.C. provides \$32 million annually under the Women's Transition Housing and Support Program to support more than 800 units of transitional housing and safe homes as well as second stage housing options for women and their children who are fleeing abuse, including indigenous women and children. All these housing programs serve indigenous women and some are operated by indigenous agencies.<sup>516</sup> Canada indicated that through the same program, in the lower Mainland, the Province also provides priority placement and support services in social housing for women leaving transition houses.<sup>517</sup> Also, more than 200 off-reserve units have been built

<sup>510</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 242.

<sup>511</sup> State of Canada, Response to the IACHR's Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>512</sup> State of Canada, Response to the IACHR's Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>513</sup> State of Canada, Response to the IACHR's Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>514</sup> State of Canada, Response to the IACHR's Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>515</sup> State of Canada, Response to the IACHR's Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>516</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 272; Updated information provided by the Canadian State on July 2, 2013.

<sup>517</sup> Updated information provided by the Canadian State on July 2, 2013.

in partnership with Aboriginal Housing organizations to provide safe, secure and culturally appropriate housing for youth, women, elders and those struggling with addictions.<sup>518</sup>

285. Information provided by the province of B.C. indicates that the provincial school curriculum includes healthy relationship learning outcomes to educate students on violence prevention.<sup>519</sup> B.C. has also put in place the ERASE (Expect Respect and a Safe Education) strategy, a multi-pronged prevention and intervention strategy designed to address all forms of bullying and harmful behaviors in schools.<sup>520</sup>
286. The IACHR was informed about a Federal-Provincial-Territorial (“FPT”) Working Group on Aboriginal Justice created in 2004 to discuss how to advance work on indigenous issues.<sup>521</sup> In June 2008 a renewed mandate was assigned to the Working Group. The focus of this mandate was analysis of the causes of higher rates of victimization and abuse in indigenous communities as a result of interpersonal and family violence.<sup>522</sup> According to the Canadian State, the Working Group has been conducting an on-going analysis of key indigenous justice policy issues, including crime prevention, mental health, community justice, victims’ services and violence against indigenous women and girls. Also, in November 2012, FPT ministers directed the Working Group, through its Sub Committee on Violence against Aboriginal Women and Girls, to develop a justice framework to coordinate federal, provincial and territorial actions across the law enforcement and justice spectrum to address violence against indigenous women and girls.<sup>523</sup> The IACHR was informed that in November 2013 a draft framework was issued for discussion. According to NWAC and FAFIA:<sup>524</sup>

the document is silent on standards and accountability mechanisms for police. It acknowledges the social economic factors which make Aboriginal women and girls vulnerable to violence, but offers no strategic national plan for addressing them. It also lacks an identifiable coordinated process for moving forward.

287. The IACHR was also informed about the FPT Working Group on Victims of Crime and the Aboriginal Victims of Crime Sub-Committee, whose mandate is to gather knowledge regarding indigenous victims of crime in Canada and share it with the Working Group. The Sub-Committee seeks to improve services for indigenous victims of crime by informing service delivery and programming.<sup>525</sup>

<sup>518</sup> This includes units in Abbotsford, Chilliwack, Dawson Creek, Kamloops, Port Alberni, Vancouver, Vernon and Williams Lake. Updated information provided by the Canadian State on July 2, 2013.

<sup>519</sup> State of Canada. *General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 271; Updated information provided by the Canadian State on July 2, 2013.

<sup>520</sup> Updated information provided by the Canadian State on July 2, 2013.

<sup>521</sup> The Working Group was originally mandated to assist FPT in addressing the over-representation of indigenous people as offenders and victims of their under-representation as court-workers, lawyers and judges and in working together to address the underlying causes that tend to bring Indigenous people in contact with the criminal justice system. The Working Group is comprised of representatives of each province and territory and from two federal departments – the Department of Public Safety Canada and the Department of Justice Canada. State of Canada, Follow up information provided by the State of Canada following the IACHR visit to Canada.

<sup>522</sup> State of Canada, Follow up information provided following the IACHR visit to Canada.

<sup>523</sup> State of Canada, Follow up information provided following the IACHR visit to Canada.

<sup>524</sup> NWAC and FAFIA, *Updates for the Inter-American Commission on Human Rights, Murdered and Disappearances of Aboriginal Women and Girls in Canada*, April 2014.

<sup>525</sup> The Sub Committee is currently compiling descriptions of methods and practices across Canada to deliver culturally relevant victim services for indigenous victims of crime. It is also compiling an inventory of programs and services in each jurisdiction for families of missing or murdered Indigenous women, which are intended to provide up to date information on best practices that can be explored and considered for development in jurisdictions across Canada. State of Canada, Follow up information provided following the IACHR visit to Canada.

### ***a. The current focus, the question of a National Inquiry and priorities looking forward***

288. The Canadian State informed the IACHR that in general terms, in order to address the situation of missing and murdered indigenous women, it has put in place a seven-point strategy, which includes:<sup>526</sup>
- establishing a National Centre for Missing Persons and Unidentified Human Remains; expanding the Canadian Police Information Centre (CPIC) database
  - Creating a national website to help match older missing persons cases and unidentified human remains;
  - supporting school and community pilot projects aimed at reducing the additional vulnerability of young indigenous women;
  - supporting victim services that are culturally appropriate for indigenous women;
  - developing an extensive web-based compendium of promising practices to help indigenous communities (as well as law enforcement and justice partners) find innovative ways to reduce violence and increase community safety;
  - working with indigenous communities to develop community safety plans; and
  - supporting the development of public awareness materials to help end cycles of violence affecting indigenous people.
289. Also, Suzanne Anton, the B.C. Attorney General, informed the IACHR delegation that the implementation of the recommendations established in the Oppal report fell under her responsibility. In this regard, the IACHR received information that from the two urgent measures identified by the Oppal Report - the commitment to provide \$750k to WISH Drop-In Centre Society and the development of a targeted engagement plan to safer transport options along Highway 16 - the first commitment regarding WISH was fulfilled.<sup>527</sup> The plan for safer transport options was still pending as of the date of this report.
290. In its observations on this report, the Canadian Government indicated that in response to the MWCI report, “work is substantively underway or completed, in BC in line with most of the areas of the report.” Regarding the safer transport options, the State informed that “the BC government has held meetings with a number of stakeholders and is working on delivering a series of practical, sustainable solutions.”<sup>528</sup> In particular, the State updated that the BC Government has held meetings with over 80 leaders representing First Nations, local governments and municipalities.<sup>529</sup>
291. The IACHR notes that after Commissioner Oppal’s report was released, in December 2012, the Hon. Steven Point was appointed to champion the implementation of the MCWI Report recommendations and to chair an Advisory Committee on the Safety and Security of Vulnerable Women. In May 2013, some families of missing women pursued civil suits related to the Pickton case, seeking compensation from the State and the RCMP. On May

<sup>526</sup> State of Canada, Follow-up information to IACHR visit, August 19, 2013.

<sup>527</sup> Ministry of Justice of B.C., Safety and Security of Vulnerable Women in B.C. *A Status Report in Response to: Forsaken – The Report of The Missing Women Commission of Inquiry*.

<sup>528</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>529</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, Annex D, October 30, 2014.

17, 2013, Mr. Point, announced his resignation as Chair of the Advisory Committee, stating that, given the litigation started by some family members of the victims of the Pickton case, it was “impossible to continue in [his] role as special advisor to government in relation to the recommendations [...]”.<sup>530</sup> The response by the then Attorney General, Shirley Bond, was to caution that the litigation could limit the government’s ability to achieve compliance with the MWCI recommendations: “this pursuit of litigation will impact the government’s current process in responding to the recommendations from the Missing Women Commission of Inquiry and we now have to analyze how we will continue to move forward while the court case is underway.”<sup>531</sup> The IACHR has not been informed regarding who is currently chairing the Advisory Committee and what other steps have been undertaken to implement the recommendations established in Commissioner Oppal’s report. According to NWAC, as of March 17 2014, eleven of the litigants had accepted the settlement offered by the BC Government.

292. The IACHR received information that on March 18, 2014, Attorney General and Minister of Justice Suzanne Anton announced that, following one of the recommendations of the MCWI, 98 children of the missing and murdered women identified in the MCWI report were eligible for compensation.<sup>532</sup> In its observations on this report, the Canadian Government informed the IACHR that through a partnership of the Government of BC, the city of Vancouver and the Government of Canada, a Compensation Fund has been made available to each of the living, biological children of the women identified in the report.<sup>533</sup> It also reported that, to date, 70 eligible individuals have contacted the Compensation Fund and are in various stages of obtaining access to the compensation.<sup>534</sup>
293. Also, in a letter sent to the Missing and Murdered Women’s Coalition, the Attorney General indicated that on March 13, 2014 the Ministry of Justice announced \$845,000 in civil forfeiture funds that will directly address a number of the recommendations in the report to keep women safe.<sup>535</sup> Also, over \$2 million was provided to initiatives that prevent violence against women, including initiatives addressing sexual exploitation and human trafficking.<sup>536</sup>
294. Regarding the question of a National Inquiry, the IACHR was repeatedly informed about the need to call for a National Inquiry on Missing and Murdered Indigenous Women and Girls. Although there are some differences in opinion about whether a national public inquiry is necessary, support for it is widespread:

In order to seek justice for aboriginal women, governments and others must fully understand these gaps and conduct a thorough review of public policy which must include an analysis of deeply rooted and interrelated factors such as colonialism, racism and conditions of poverty. UBCIC and other organizations continue to press for the

<sup>530</sup> Government of British Columbia, Statement on Hon. Steven Point resignation. May 17, 2013.

<sup>531</sup> Government of British Columbia, Statement on Hon. Steven Point resignation. May 17, 2013.

<sup>532</sup> Government of British Columbia, Ministry of Justice, Compensation Fund – Missing Commission of Inquiry. Available at: <http://www.pssg.gov.B.C..ca/compensationfund/index.htm>

<sup>533</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>534</sup> State of Canada, Response to the IACHR’s Report on the Situation of Missing and Murdered Indigenous Women in British Columbia, Canada. Note PRMOAS – 0232, October 30, 2014.

<sup>535</sup> Civil forfeiture funds means assets that have been confiscated by the State and pursuant to law in civil cases.

<sup>536</sup> Letter from Suzanne Anton, Attorney General to the Missing and Murdered Women’s Coalition, March 24, 2014.

establishment of a National Public Commission of Inquiry on violence against aboriginal women and girls. This is a necessary step in addressing the broad factors that lead to increased vulnerability among Indigenous peoples.<sup>537</sup>

295. During its visit the IACHR asked the government for its views on launching a National Action Plan to address missing and murdered indigenous women. The State responded that the federal government is focusing its efforts on concrete actions to address the phenomenon of missing and murdered indigenous women, and on violence against indigenous women and girls. Canada reported a variety of initiatives to address the situation of missing and murdered indigenous women, both at the federal and provincial level. These have been described in this section: the support of indigenous communities; actions aimed at prevention, education and awareness; and victim services.<sup>538</sup> In response to calls for a national inquiry, the Government of Canada has indicated on several occasions that “money would be better spent on action rather than more recommendations.”
296. The State stressed that while a national-level action plan may appear desirable to some and while there are clear benefits to coordination among agencies and service-providers, community-based, locally-driven responses which reflect the circumstances, needs, and priorities of those most affected by violence against indigenous women are key instruments in resolving this issue.
297. The State also affirmed that some of the provinces and territories have chosen to adopt their own action plans.<sup>539</sup> For example, The B.C. Government made reference to the Corrections

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<sup>537</sup> Union of British Columbia Indian Chiefs. Letter to Commissioners Tracy Robinson and Dinah Shelton regarding their visit Canada, August 7, 2013.

<sup>538</sup> The State indicated that the Department of Public Safety Canada is supporting the development of community safety plans by Aboriginal communities to reduce violence and improve the safety of Aboriginal communities, including women and girls within these communities. State of Canada. General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada. Response of the Government of Canada to the Request for Information, July 23, 2012, para. 89.

<sup>539</sup> The Government of Canada made reference to programs directed at reducing rates of victimization, crime and incarceration among indigenous people, such as the Aboriginal Justice Strategy, (AJS), which is coordinated by the Department of Justice and works on a cost-shared basis with Canada’s provincial and territorial governments and in partnership with Indigenous communities. Programs serve over 600 communities, helping the mainstream justice system to become more responsive and sensitive to the needs and culture of Aboriginal communities. According to the information provided in the 2011-12 fiscal year the federal government invested \$12.5 million in the AJS, which brings the total federal investment to \$85 million over the period from 2007-2012. The B.C. Government also made reference to the Corrections B.C.’s Aboriginal Programs and Relationships that helps improve indigenous peoples’ experience of the justice and corrections systems and the Native Courtworker and Counselling Association of B.C. which assists indigenous peoples in the justice system. Through the First Nations Policing Program (FNPP), Public Safety Canada provides funding to support policing services in First Nations and Inuit communities that are dedicated, culturally appropriate, and accountable to the communities they serve. Public Safety Canada’s Aboriginal Corrections Policy Unit supports community-based healing strategies that are rooted in traditional Aboriginal healing processes. The State indicated that these healing processes address the underlying causes of abuse and dysfunction. As part of Public Safety Canada, the National Crime Prevention Centre (NCPC) supports crime prevention initiatives that reduce known risk factors for offending in high-crime areas and among vulnerable populations. Recognizing their need for appropriate preventative interventions, the Centre has identified Aboriginal and northern communities as a priority population. In addition to the work being undertaken with police task forces, and the work that was completed with the Native Women’s Association on community education toolkits, the RCMP also contributed to the development of Community Forums to increase awareness about women who have gone missing along the stretch of Yellowhead Highway 16 West running between Prince George and Prince Rupert, British Columbia. State of Canada. General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada. Response of the Government of Canada to the Request for Information, July 23, 2012, paras. 93 -98; Updated information provided by the State, July 2, 2013.

B.C.'s Aboriginal Programs and Relationships that helps improve indigenous peoples' experience of the justice and corrections systems and the Native Courtworker and Counselling Association of B.C. which assists indigenous peoples in the justice system. Through the First Nations Policing Program (FNPP), Public Safety Canada provides funding to support policing services in First Nations and Inuit communities that are dedicated, culturally appropriate, and accountable to the communities they serve.<sup>540</sup>

298. Individual initiatives are coordinated between levels of government using existing mechanisms such as federal/provincial/territorial meetings. Therefore there are no plans to create “a new bureaucratic infrastructure to oversee or coordinate these activities beyond that which already exists.”<sup>541</sup>
299. The IACHR was informed that in February 2014, NWAC delivered a petition with over 23,000 signatures to the House of Commons in support of a call for a National Public Inquiry into the murdered and missing indigenous women and girls.<sup>542</sup> Canada responded to the petition in March 2014 indicating the steps that the government had taken to address this problem.<sup>543</sup> The State pointed out changes that were made to ensure that offenders are held accountable for their crimes. These included changes made in the form of the Safe Streets and Communities Act. The Act was intended to promote safety and security by ensuring that criminals are held fully accountable for their actions through increased penalties for violent crimes, restrictions on the use of conditional sentences and house arrests for serious and violent crimes, and increased penalties for sexual offences against children. The State also referred to a plan announced in 2010 that contained a seven-step strategy to reduce violence against indigenous women and children and increase community safety. All these actions were based on recommendations from more than 45 studies, commissions, inquiries and other reports that already exist on this issue and that emphasize the need for action.<sup>544</sup>
300. In this regard, recommendations from CERD's 2012 Concluding Observations suggest that Canada coordinate its various policies and programs in a comprehensive national strategy, a recommendation that was also made during Canada's 2009 and 2013 Universal Periodic Review. Canada's provincial premiers have also expressed support for a National Inquiry into the matter.<sup>545</sup> The IACHR also notes that among the recommendations in its report on the situation of indigenous peoples in Canada, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, suggested that “the federal Government should undertake a comprehensive, nation-wide inquiry into the issue of missing and murdered aboriginal women and girls, organized in consultation with indigenous peoples.”<sup>546</sup>

<sup>540</sup> State of Canada. General Session Hearing Concerning Report of Missing and Murdered Indigenous Women and Girls in British Columbia, Canada. Response of the Government of Canada to the Request for Information, July 23, 2012, paras. 93 -98; Updated information provided by the State, July 2, 2013.

<sup>541</sup> State of Canada, Follow up response to IACHR question on Missing and Murdered Aboriginal Women visit, provided by Public Safety Canada.

<sup>542</sup> NWAC Petition. Available at: <http://www.nwac.ca/nwac-petition-national-inquiry-needed>

<sup>543</sup> Order of the House of Commons, Response to the Petition, Nro. 412-1636, 31 March 2014.

<sup>544</sup> Order of the House of Commons, Response to the Petition, Nro. 412-1636, 31 March 2014.

<sup>545</sup> The Globe and Mail, *Premiers call for inquiry on missing aboriginal women*, July 24, 2013. Available at: <http://www.theglobeandmail.com/news/politics/premiers-call-for-inquiry-on-missing-aboriginal-women/article13398161/>; CBC. News, *Premiers back national inquiry on missing aboriginal women*, July 24, 2013. Available at: <http://www.cbc.ca/news/politics/premiers-back-national-inquiry-on-missing-aboriginal-women-1.1359089>

<sup>546</sup> United Nations, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, *The Situation of indigenous peoples in Canada*, A/HRC/27/52/Add.2, 7 May 2014, para. 89.



301. The IACHR acknowledges the State's efforts to address the situation of missing and murdered indigenous women in British Columbia. The findings in the Oppal report regarding the irregularities in the handling of the investigations can serve as a starting point for reforms to the investigative function. This could help prevent irregularities in investigations of future disappearances or murders of indigenous women. With respect to the past cases examined in this report, in accordance with international human rights standards, the Canadian State is obliged to continue the investigation of unsolved cases of missing indigenous women. In this regard the Commission has become more aware of many cases in which investigations have remained pending, or the authorities have decided not to proceed with prosecution. The IACHR stresses the importance of the right of families and relatives to know what happened to their loved ones. The authorities cannot justify the failure to complete an investigation or prosecution on insufficient proof if the reason for the insufficiency is deficiencies or irregularities in the investigation.
302. In addition, the IACHR notes that the State must provide a national coordinated response to address the social and economic factors that prevent indigenous women from enjoying their social, economic, cultural, civil and political rights, the violation of which constitute a root cause of their exposure to higher risks of violence.
303. The IACHR also identifies remaining challenges in the process of coordination and implementation of the State's policies, services and overall initiatives identified in this section. The IACHR observes that the State must improve its consultation mechanisms with the different parties involved, including indigenous women, indigenous women's groups, civil society organizations and families and relatives of missing and murdered indigenous women, in order for those mechanisms to be successful.

CHAPTER 6  
CONCLUSIONS  
AND RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

304. The IACHR makes the following recommendations, based on its close analysis of the situation of missing and murdered indigenous women in British Columbia. The IACHR notes the willingness and openness of the Canadian State, at both the federal and provincial levels, to discuss the situation, its causes, and how it can be further addressed. The IACHR also recognizes the steps already taken by the Canadian State, at both the federal and provincial levels, to address some of the particular problems and challenges that indigenous women and girls in Canada, and British Columbia specifically, must confront, a number of which have been identified in this report.
305. The disappearances and murders of indigenous women in Canada are part of a broader pattern of violence and discrimination against indigenous women in Canada. The fact that indigenous women in Canada experience institutional and structural inequalities resulting from entrenched historical discrimination and inequality is acknowledged by the Government of Canada and by civil society organizations. There is also agreement on certain root causes of the high levels of violence against indigenous women and the existing vulnerabilities that make indigenous women more susceptible to violence.
306. Addressing violence against women is not sufficient unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed. The IACHR stresses the importance of applying a comprehensive holistic approach to violence against indigenous women. This means addressing the past and present institutional and structural inequalities confronted by indigenous women in Canada. This includes the dispossession of indigenous lands, as well as historical laws and policies that negatively affected indigenous people, the consequences of which continue to prevent their full enjoyment of their civil, political, economic, social and cultural rights. This in turn entails addressing the persistence of longstanding social and economic marginalization through effective measures to combat poverty, improve education and employment, guarantee adequate housing and address the disproportionate application of criminal law against indigenous people. These measures must incorporate the provision of information and assistance to ensure that indigenous women have effective access to legal remedies in relation to custody matters. Specifically regarding Prince George, the IACHR urges the Canadian State to immediately provide a safe public transport option along Highway 16.
307. The IACHR recognizes the existence of a wide variety of initiatives to address the situation of violence against indigenous women in Canada. However, based on the information received and analyzed, the IACHR strongly urges the need for better coordination among the different levels and sectors of government. The IACHR stresses that both federal and provincial governments are responsible for the legal status and conditions of indigenous women and girls and their communities.
308. Initiatives, programs and policies related to indigenous women should be tailored to their needs and concerns, including whether they are living on reserve or off reserve. Their consultation is crucial for the success of any initiative, especially given the context of historical and structural discrimination. In this regard, Canada should adopt measures to promote the

active participation of indigenous women in the design and implementation of initiatives, programs and policies at all levels of government that are directed to indigenous women, as well as those that pertain to indigenous peoples more broadly. The selection of indigenous women to participate in these initiatives should be made in consultation with recognized associations of indigenous peoples and of indigenous women and their leadership.

309. The IACHR strongly supports the creation of a national-level action plan or a nation-wide inquiry into the issue of missing and murdered indigenous women and girls, in order to better understand and address the problem through integral approaches. The IACHR considers that there is much more to understand and to acknowledge in relation to the missing and murdered indigenous women. This initiative must be organized in consultation with indigenous peoples, particularly indigenous women, at all stages from conception, to establishing terms of reference, implementation and evaluation.
310. The IACHR recommends the development of data collection systems that collect accurate statistics on missing and murdered indigenous women, by consistently capturing the race of the victim or missing person. Capturing accurate data is the basis for moving forward in any initiative.
311. The IACHR recommends that the State implement a policy aimed at ensuring an appropriate response when a report of a missing person, in particular an indigenous women, is filed.
312. The IACHR considers that full compliance with the already established recommendations of the Oppal report is necessary and will bring about important advances. Drawing from those recommendations, the IACHR stresses the importance of appointing a new Chair of the Advisory Committee on the Safety and Security of Vulnerable Women as soon as possible. Canada should ensure that the different policing services in BC understand their jurisdiction and responsibilities when conflicts of policing jurisdiction arise. Canada should also establish or strengthen accountability mechanisms – preferably through independent bodies – for officials handling investigations and prosecutions, and should provide access to legal aid and support services to the families of missing or murdered indigenous women, with the families being able to freely choose their own representative.
313. The IACHR also recommends that police officers, including both RCMP and Vancouver Police, and public sector functionaries, such as prosecutors, judges and court personnel, receive mandatory and ongoing training in the causes and consequences of gender-based violence in general and violence against indigenous women in particular. This includes training on the police duty to protect indigenous women from violence.
314. Regarding the ongoing investigations of missing and murdered women, the IACHR stresses the importance of the principle of due diligence. In this regard, the State should:
  - Give special judicial protection and guarantees to family members and relatives, especially by improving mechanisms to ensure that such parties have access to information about the development of the investigation and about their rights in any legal proceedings. Effective access by indigenous people to such protection is especially important given the context of historical and structural discrimination.
  - Guarantee that family members or other affected parties of missing and murdered indigenous women can obtain legal aid that is effective and with which these parties feel comfortable, again taking into account the context of discrimination and marginalization.

- Ensure adequate oversight of officials responsible for responding to and investigating crimes of violence against women, and ensure that administrative, disciplinary or criminal measures are available to hold such officials accountable.
- Provide indigenous women and their relatives who are seeking assistance from officials with an available and effective procedure to file complaints in the case of noncompliance by such officials with their duties under the law, and information on how to initiate and pursue that procedure.
- Provide integral social and support services to all family members of missing and murdered indigenous women, as well as to indigenous women who want to remove themselves from an abusive situation.
- Further develop the steps taken to provide reparations to families of missing and murdered indigenous women in cases where the State has failed to exercise due diligence.

315. In light of the State's commitment to improve the rights and circumstances of indigenous women, the IACHR hopes that the conclusions and recommendations offered in this report may assist the State in putting its commitment into practice.

