



**MISSING AND MURDERED
ABORIGINAL WOMEN AND GIRLS IN
BRITISH COLUMBIA, CANADA**

**Briefing Paper
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**Submitted By:
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ORGANIZATIONS REPRESENTED

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

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

Canadian Feminist Alliance for International Action The Canadian Feminist Alliance for International Action (FAFIA) is an alliance of more than eighty Canadian women's organizations founded following the Fourth World Conference on Women, Beijing 1995. One of the central goals of FAFIA is to ensure that Canadian governments respect, protect and fulfill the commitments to women that they have made under international human rights treaties and agreements. FAFIA has made submissions regarding Canada's compliance with its human rights obligations to the CEDAW Committee in 2003 and 2008, the Human Rights Committee in 2005, the Committee on Economic, Social and Cultural Rights in 2006, and the Committee on the Elimination of Racial Discrimination in 2007 and 2012. FAFIA also participated in the preparation of NGO submissions for the Universal Periodic Review of Canada by the Human Rights Council in 2009.

The University of Miami School of Law Human Rights Clinic The Human Rights Clinic (HRC) at the University of Miami School of Law exposes students to the practice of law in the transnational and cross-cultural context of human rights litigation and advocacy at the local, national, and international levels. In the classroom, students critically engage with human rights law and contemporary social problems while honing their lawyering and advocacy skills. To bridge theory and practice, students also gain hands-on experience working directly with practitioners and affected individuals on active human rights cases and projects. The Clinic pursues litigation, legislative advocacy, community organizing, documentation, public policy analysis, media advocacy, and public education. Relying upon the core principles articulated in human rights treaties and related instruments, the Clinic seeks to affect change and promote social and economic justice both locally and globally.

SUMMARY

Aboriginal women and girls in British Columbia and throughout Canada face unacceptably high rates of violence, as is shown by the over 600 disappearances and murders of Aboriginal women and girls across the country over the past 30 years, which the Native Women's Association of Canada has documented. British Columbia accounts for 160 of the cases NWAC documented by March 2010, more than a quarter of the total, of which 63 percent are murder cases. With 49 percent of its murder cases unsolved, British Columbia has the highest percentage of unsolved murders of Aboriginal women and girls in Canada.

Violence against Aboriginal women and girls and the State's failure to respond appropriately to this problem are integrally linked to the fact that Aboriginal women and girls experience widespread discrimination and are amongst the most socially and economically disadvantaged groups in Canadian society—a reality which is deeply rooted in colonization and its impacts. Discrimination against Aboriginal women and girls is also embedded in the culture of the criminal justice system in British Columbia. The social and economic marginalization of Aboriginal women and girls not only makes them prey for violent men, but is used by officials as a justification for failing to protect them.

Despite the overwhelming statistics concerning disappearances and murders of Aboriginal women and girls, the Governments of Canada and British Columbia have failed in their obligation to exercise due diligence to adequately prevent the violence, investigate reports of disappearances and murders, and bring perpetrators to justice. Authorities, and in particular the federal government, have failed to implement a comprehensive, national plan to address the violence, including measures such as appropriate training for police, prosecutors and judges in all jurisdictions, effective police protocols for dealing with missing Aboriginal women and girls, reliable systems for disaggregated data collection, co-ordination across jurisdictions, and accountability mechanisms. Initiatives to address the disappearances and murders have, so far, been piecemeal and palliative at best, and counterproductive and discriminatory at worst.

The Government of Canada must take immediate and comprehensive action in order to fulfill its international human rights obligations to prevent, investigate, and punish acts of violence perpetrated against Aboriginal women and girls in British Columbia and throughout the nation.

I. INTRODUCTION

Violence against Aboriginal women and girls in Canada is a problem of massive proportions, and its manifestation in British Columbia is particularly pronounced. To date, the Native Women's Association of Canada (NWAC) has documented over 600 cases of missing and murdered Aboriginal women and girls throughout Canada over the past 30 years.¹ For the period from 2000 to 2008 alone, NWAC documented 153 murders of Aboriginal women.² The province of British Columbia accounts for 160 of the cases that NWAC had documented by March 2010, 27 percent of the total, and the highest percentage of suspicious death cases. Of these 160 cases, 63 percent are murder cases. With 49 percent of its murder cases unsolved, British Columbia has the highest percentage of unsolved murders of Aboriginal women and girls in Canada.³

Despite these overwhelming statistics concerning disappearances and murders of Aboriginal women and girls, the Governments of British Columbia and Canada have failed in their obligation to exercise due diligence to adequately prevent this violence, investigate reports of disappearances and murders, and bring perpetrators to justice. British Columbia authorities, as well as the federal government, have failed to implement a comprehensive, national plan to stop this violence, including measures such as training, protocols, systems for disaggregated data collection, coordination across jurisdictions, and accountability mechanisms.⁴ For example, police are not required to or even provided training or support to ensure consistent and accurate record-keeping concerning the Aboriginal identity of crime victims and missing persons.⁵

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

The safety and protection of Aboriginal girl-children is also a serious issue. Justice for Girls, a British Columbia-based non-governmental organization, reported to the UN CEDAW Committee at the time of Canada's last review that "Indigenous girls in Canada face extreme levels of violence as well as deeply rooted and pervasive social inequality..."⁸ Justice for Girls reports further that "[w]idespread human rights abuses against Indigenous girls are committed in the context of the criminal justice system, both in terms of over-criminalization and policing of girls, and physical and sexual abuses by police and other criminal justice authorities. These state perpetrated abuses and state failures to prevent, investigate and punish acts of violence against Indigenous girls, along with a lack of independent oversight and accountability of policing...are a very serious human rights concern..."⁹

This culture of violence against Aboriginal women and girls in British Columbia generally appears within an overall context of discrimination and marginalization. Aboriginal women in British Columbia face discrimination within the criminal justice system, as is evidenced by, *inter alia*, discriminatory sentencing practices, mistreatment and abuse by police officers both inside and outside of custody, and failure to prosecute crimes based on discriminatory notions of victim credibility and victim blaming by insisting she placed herself in danger.¹⁰

More broadly, 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.¹¹ Additionally, a disproportionate number of the most vulnerable street prostituted women are Aboriginal women, who struggle with addiction, homelessness, and chronic, often life-threatening, health problems.¹² Engagement in prostitution is a reflection of the overall economic and social marginalization faced by Aboriginal women and girls, and it further increases levels of vulnerability to coercion, abuse and violence. The discrimination and indifference by authorities towards Aboriginal women results in impunity for many of the crimes committed against them, and permits the violence to continue.

The Native Women's Association of Canada, the Canadian Feminist Alliance for International Action, and the University of Miami School of Law Human Rights Clinic believe that the above-mentioned factors amount to serious violations by the Governments of British Columbia and Canada of the human rights of Aboriginal women and girls under the American Declaration on the Rights and Duties of Man ("Declaration"), including: the right to life, which includes "having access to the conditions that guarantee a dignified existence,"¹³ (Art. I); the right to equality/non-discrimination (Article II); the right to protection of honor, personal reputation, and private and family life (Article V); the rights of the child (Article VII); the right to preservation of health and well-being (Article XI); and the right to access the courts and to justice (Article XVIII). Although Canada has not yet ratified the principal Inter-American treaties, these failures would likely also amount to violations of the corresponding articles within the American Convention on Human Rights and contravene the goals of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belem do Para").

Although the Governments of British Columbia and Canada have taken some positive steps to address this massive problem on both the local and national levels, these actions fall far short of fulfilling Canada's international human rights obligations to prevent, investigate, and punish acts of violence perpetrated against Aboriginal women and girls.¹⁴ As described above, Aboriginal women and girls continue to experience social and economic marginalization and be at extreme risk of gender-based violence in British

Columbia. State failure exists at two levels: 1) police systematically fail to protect Aboriginal women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered; and 2) Aboriginal women and girls continue to experience disadvantaged social and economic conditions, which make them vulnerable to violence and unable to escape from it.¹⁵

Discriminatory attitudes toward Aboriginal women and girls are reflected in both the private and public spheres, and manifest both explicitly and implicitly, as structural discrimination, within British Columbia's criminal justice system. One particularly egregious example is the British Columbia Missing Women Commission of Inquiry's investigation of failures by the criminal justice system in the case of serial killer Robert William Pickton, whose victims were disproportionately Aboriginal women. The Commission of Inquiry's investigation has been plagued with controversy and missteps: it has been criticized for its inadequate geographic, temporal, and thematic scope. Most importantly, the Government of British Columbia's decision not to fund legal counsel for the Native Women's Association of Canada and other groups granted standing in the Inquiry has resulted in the de facto exclusion of Aboriginal groups from participation,¹⁶ and rendered the Commission of Inquiry unable to provide solutions to the violence against Aboriginal women and girls.

International Condemnation of Human Rights Violations Against Aboriginal Women and Girls in Canada

Over the past seven years, the international community has called on Canada to take steps to address the violation of the human rights of Aboriginal women and girls to equality, life and security of the person. Since 2005, the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Elimination of Discrimination against Women (CEDAW) have identified and made recommendations concerning three particular areas of discrimination against Aboriginal women in Canada:

- disproportionately high rates of violence—including assaults, murders and disappearances;
- underlying social and economic inequality; and
- lack of equal access to the protection of the law and to remedies for violations.¹⁷

In 2006, the Human Rights Committee, after reviewing Canada's compliance with its obligations under the International Covenant on Civil and Political Rights, stated in its Concluding Observations:

23. The Committee is concerned that Aboriginal women are far more likely to experience a violent death than other Canadian women. While noting the State party's numerous programs aimed at addressing the issue, the Committee regrets the lack of precise and updated statistical data on violence against Aboriginal women, and notes with concern the reported failure of police forces to recognize and respond adequately to

the specific threats faced by them. The State party should gather accurate statistical data throughout the country on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system. The State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations.¹⁸

During the Universal Periodic Review of Canada in 2009 by the Human Rights Council, recommendations were made to Canada regarding violence against women, and against indigenous women in particular. Specifically, the Council recommended that Canada “systematically investigate and collect data on violence against women”; “institute comprehensive reporting and statistical analysis of the scale and character of violence against indigenous women, so that a national strategy can be initiated”; and “adopt further measures to ensure: accountability of the police for their proper, sensitive and effective conduct in cases of violence against women...and better protection...of aboriginal women...including through addressing their low socio-economic status and discrimination against them.”¹⁹ Canada accepted the underlying principles in these recommendations: that Canada remedy police failures to deal with violent crimes against Aboriginal women and girls, and that Canada address the low socio-economic status of Aboriginal women and girls as a factor that contributes to the violence against them.

The CEDAW Committee, after reviewing Canada’s compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women in 2008, stated in its Concluding Observations:

32. The Committee urges the State party to examine the reasons for the failure to investigate the cases of missing or murdered Aboriginal women and to take the necessary steps to remedy the deficiencies in the system. The Committee calls upon the State party to urgently carry out thorough investigations of the cases of Aboriginal women who have gone missing or been murdered in recent decades. It also urges the State party to carry out an analysis of those cases in order to determine whether there is a racialized pattern to the disappearances and take measures to address the problem if that is the case.²⁰

At the same time, the CEDAW Committee recommended that Canada “develop a specific and integrated plan for addressing the particular conditions affecting aboriginal women, both on and off reserves, ...including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence...”²¹

Notably, after finding that Canada had not implemented its 2008 recommendation,²² the CEDAW Committee decided at its October 2011 session to initiate an inquiry under Article 8 of the Optional Protocol to the Convention on the Elimination of Discrimination Against Women.²³ Under Article 8, the Committee has discretion to initiate an inquiry when it has reliable information that there are “grave or systematic violations” occurring

within a state party.²⁴ This inquiry procedure has only, to date, resulted in one public report on a similar situation of systematic disappearances and murders of women in Juarez, Mexico.²⁵ The requirement of “grave or systematic violations” and the rarity with which the CEDAW inquiry procedure is invoked underscore the seriousness of the situation in Canada.

During its most recent session in March 2012, the Committee on the Elimination of Racial Discrimination (CERD Committee), after reviewing Canada’s compliance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, stated in its Concluding Observations:

17. The Committee takes note of various measures taken by the State party to combat violence against Aboriginal women and girls, such as the Family Violence Initiative, the Urban Aboriginal Strategy, and various initiatives taken at the provincial or territorial level to address murders and disappearances of Aboriginal women. However, the Committee remains concerned that Aboriginal women and girls are disproportionately victims of life-threatening forms of violence, spousal homicides and disappearances.²⁶

Notably, the 2012 CERD Committee’s Concluding Observations echo the HRC Committee’s 2006 Concluding Observations and the CEDAW Committee’s 2008 Concluding Observations, described *supra*, concerning violence against Aboriginal women and girls. The CERD Committee recommends that Canada not only consider adopting a national plan of action on addressing and implementing systematic change to the issue of gender-based violence against Aboriginal women, but also that Canada should facilitate access to justice for Aboriginal women who are subjected to gender-based violence by appropriately investigating, prosecuting, and punishing those responsible. The CERD Committee also asked Canada to report back in one year on this recommendation.²⁷

II. MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS IN CANADA: AN OVERVIEW

Canada’s official statistics reveal that Aboriginal women and girls experience extremely high levels of violence. In the 2004 General Social Survey, Aboriginal women reported rates of violence, including domestic violence and sexual assault, 3.5 times higher than non-Aboriginal women.²⁸ Aboriginal women are also significantly more likely than non-Aboriginal women to experience the most severe and potentially life-threatening forms of violence, including being beaten or choked, having had a gun or knife used against them, or being sexually assaulted.²⁹ Young Aboriginal women are five times more likely than other Canadian women of the same age to die of violence.³⁰

Statistics Canada, Canada’s national statistical agency, also reports that Aboriginal women and girls experience both high levels of sexual abuse and violence in their own families and communities, and high levels of stranger violence in the broader society.³¹

However, Statistics Canada's data on violence against Aboriginal women and girls is incomplete. There is no reliable source of disaggregated data on violence against Aboriginal women and girls because police across Canada do not consistently report or record whether the victims of violent crime are Aboriginal. The General Social Survey collects information on domestic violence and sexual assault, but does not collect information on homicides. The Aboriginal status of homicide victims is not consistently reported or recorded in the Homicide Survey, and disappearances are not reported in either survey.³²

Because of this lack of reliable and comprehensive official documentation of violence against Aboriginal women and girls, and because of direct and intimate knowledge of many disappearances and murders of mothers, daughters, and sisters, the Native Women's Association of Canada in 2005 initiated the Sisters in Spirit project. Sisters In Spirit collected information about missing and murdered Aboriginal women and girls across Canada, constructed a reliable database of information, and has published two reports reflecting this data.³³

As of March 31, 2010, NWAC had recorded information concerning 582 cases of murdered and disappeared Aboriginal women and girls in Canada. Of the 582 cases, 115 (20%) involve missing Aboriginal women and girls, 393 (67%) involve Aboriginal women or girls who died as the result of homicide or negligence, and 21 cases (4%) fall under the category of suspicious death (incidents that police have declared natural or accidental but that family or community members regard as suspicious). There are 53 cases (9%) where the nature of the case remains unknown, meaning it is unclear whether the woman was murdered, is missing or died in suspicious circumstances.³⁴ NWAC has continued to collect information since its 2010 report, and the count of missing and murdered Aboriginal women and girls is now over 600.³⁵

For the period 2000 to 2008 alone, NWAC documented 153 murders of Aboriginal women.³⁶ These women represent approximately ten per cent (10%) of the total number of female homicides in Canada during this period despite the fact that Aboriginal women make up only three per cent (3%) of the total female population.³⁷

If the same percentage of non-Aboriginal women in Canada were missing or murdered, the number would now be over 19,000, enough to populate a small city.³⁸

However, NWAC and FAFIA and most Aboriginal and human rights organizations agree that the count of missing and murdered Aboriginal women and girls is likely much higher. NWAC refers to the cases in its database as the "known cases" of missing and murdered Aboriginal women and girls, since it has included in its database only those that were reported by media and/or police. Walk 4 Justice, a British Columbia-based organization, which has carried out a walk across Canada each summer for the last five years to talk with Aboriginal families and communities about missing women, believes that there are many more cases of missing and murdered Aboriginal women and girls that have gone undocumented by police or media.³⁹

Evidence of the failures of police to protect Aboriginal women and girls from violence appears in the many reports of family members who have been treated dismissively by police officers. NWAC found that the majority of families report multiple issues and problems with the justice system's response to the disappearance or murder of their loved one. NWAC has heard on many occasions that the families experienced a lack of responsiveness, disrespect, confusing or incorrect information, poor adherence to policies and protocols and an overall discounting of family information from police service personnel.⁴⁰ Many family members have been brushed off with justifications that blamed the women, such as, "she has a high-risk life style." Many of the cases did not receive timely or thorough investigation.⁴¹

Additionally, the murderers of Aboriginal women are much less likely to be convicted. In 2010, charges have been laid in only 209 of 393 (53%) of murders of Aboriginal women, compared to the much higher national average homicide clearance rate of 84% in Canada.⁴²

The Government of Canada has publicly acknowledged that a disproportionately high number of Aboriginal women and girls are murdered and disappeared in Canada.⁴³ In 2007, a joint committee of government, Aboriginal peoples, police and community groups in Saskatchewan reported that 60 per cent of the long-term cases of missing women in the province are Aboriginal, even though Aboriginal women make up only 6 percent of the province's population.⁴⁴

Advocates believe the violence against Aboriginal women and girls is the tip of a huge iceberg of discrimination—related to gender, class, race and the impact of colonization.⁴⁵ They underscore that colonization is an ongoing narrative of violence, systemic racism, purposeful denial of culture, language and traditions, sex discrimination and legislatively imposed patriarchy.⁴⁶ Many believe it is only this complex combination of racism, misogyny, and colonization that can explain why and how so many Aboriginal women and girls have gone missing or been murdered, with so little public attention paid to this ongoing tragedy.⁴⁷

III. MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS IN BRITISH COLUMBIA: AN OVERVIEW

British Columbia accounts for 160 of the cases of missing and murdered Aboriginal women and girls in the Native Women's Association of Canada's (NWAC) database. This constitutes 27 percent of the nationwide cases of missing and murdered Aboriginal women and girls documented by NWAC as of March 2010, and the highest percentage of "suspicious death cases"—defined as cases that police have declared natural or accidental but that family or community members consider suspicious.⁴⁸ Of the 160 cases in British Columbia:

- 63 percent are murder cases (homicide or negligence causing death);
- 49 percent of the murder cases remain unsolved, among the highest rate of unsolved cases in Canada;
- 24 percent are cases of missing women and girls;

- 59 percent are young women and girls under 31 years old, especially women aged 19-30;
- The majority are mothers;
- Most of the cases occurred in urban areas, particularly Vancouver, and in the Prince George area; and
- Almost half of persons charged were strangers or acquaintances, with only 10 percent of cases involving an intimate partner or family member.⁴⁹

Clusters of Killings

a. The “Highway of Tears”

Since the 1970s, an alarming number of Aboriginal women and girls have disappeared or been murdered in the vicinity of Highway 16, the Yellowhead Highway, which runs from Manitoba to the Pacific Ocean through Northern British Columbia. This remote highway is known as the “Highway of Tears” because of the killings and disappearances of Aboriginal girls and women along the route. Victims’ families and women’s rights advocates estimate the number of disappeared or murdered at 30, while official police records indicate that 18 women and girls, half of them Aboriginal, have gone missing or been murdered along the Highway of Tears.⁵⁰ A 2009 investigation by a senior journalist with the Vancouver Sun newspaper revealed another 13 women and girls should be added to the official list of 18 missing or murdered women and girls, as their disappearances and murders occurred in the same area and in similar circumstances.⁵¹ The disappearances and murders of women and girls along this Highway first received broad public attention in 2002, when a young non-Aboriginal woman who was a tree-planter, Nicole Hoar, went missing after hitch-hiking on this road.⁵² Most of the Highway of Tears disappearances and murders remain unsolved.⁵³

There is a string of Aboriginal communities along the Highway of Tears, and no public transportation. Many Aboriginal women and girls travel from these communities, which tend to be a far distance outside of town areas, to town centers via Highway 16.⁵⁴ In 2006 a community forum recommended regular bus service for Highway 16, but nothing has changed.⁵⁵ The situation along the Highway of Tears remains especially precarious for Aboriginal women and girls.

b. Vancouver’s Missing and Murdered Women

According to an official report by the Vancouver Police Department, beginning in the early 1990s, more than 60 women went missing from the Downtown East Side of Vancouver, which is Canada’s poorest neighbourhood.⁵⁶ Most of the missing women were poor, some were engaged in prostitution, some were drug-addicted, and many were Aboriginal.⁵⁷ When friends and family members began to report to police that a daughter or sister was missing, they were met with dismissal, refusal to take reports seriously, and, even as the numbers mounted, disbelief that there could be a serial killer involved. The police considered that the women were living high-risk lifestyles, and were likely to move around. Police and city officials long denied that there was any pattern to the disappearances or that women in the area were in any particular danger.

Police investigation into the disappearances finally began in the late 1990s, and eventually resulted in the arrest of Robert William Pickton. Pickton was charged in 2002 and 2003 with first-degree murder in the deaths of 26 women in British Columbia.⁵⁸ A disproportionate number of Pickton's victims were Aboriginal. Pickton picked up his victims in the Downtown East Side, offering them drugs or money or both, and took them to his pig farm in Coquitlam, where he sexually assaulted and murdered them.

The Pickton investigation was plagued by a lack of resources, training, and leadership, poor continuity of staffing, and multi-jurisdictional challenges, because both the Vancouver Police Department and the Coquitlam Detachment of the Royal Canadian Mounted Police—a federal police force—were involved, with each agency blaming the other for failures.⁵⁹ Police failed to pursue compelling information in 1998 and 1999 suggesting Pickton was the likely killer.⁶⁰ Additionally, in two instances—in 1992 and 1997—Pickton was arrested for assault and attempted murder, but prosecutors did not proceed with these cases.⁶¹ Many believe that a full prosecution in 1997 could have prevented subsequent murders.⁶²

Pickton was charged in 2002 and 2003 with first-degree murder in the deaths of 26 women in Vancouver, British Columbia. In 2007, he was convicted of second-degree murder on six counts, while proceedings on the other counts were stayed.⁶³

IV. STATE RESPONSE: MEASURES TAKEN BY THE GOVERNMENT OF BRITISH COLUMBIA

Several steps have been taken by the government of British Columbia and Canada to address the large numbers of disappearances and murders of Aboriginal women and girls in British Columbia. However, the response falls dismally short of international and regional human rights standards, as evidenced by the mounting criticism by United Nations treaty monitoring bodies and growing criticism by national and international civil society organizations. The most prominent manifestation of this failure is British Columbia's Missing Women Commission of Inquiry.

Missing Women Commission of Inquiry

On September 27, 2010, the Government of British Columbia established the Missing Women Commission of Inquiry, naming the former Attorney General of British Columbia, Wally Oppal, Q.C., as Commissioner. The Commission has a mandate 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 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; and

d) recommend changes considered necessary respecting homicide investigations in British Columbia by more than one investigating organization, including the co-ordination of those investigations.⁶⁴

Commissioner Oppal is required to submit a report by June 30, 2012.

Both the mandate and the work of the Commission has been criticized as flawed in several respects: 1) its terms of reference are 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;⁶⁵ 2) its includes no specific focus on missing and murdered *Aboriginal* women, despite their disproportionate representation amongst the victims in British Columbia, and the proceedings of the inquiry indicate that there is no effective recognition of this problem; and 3) the lack of financial support for NWAC and other key Aboriginal organizations to participate in the inquiry process has resulted in *no Aboriginal groups participating in the process* and hence, a lack of expertise available to the Commission on the issue of Aboriginal women. The failure to provide funding for legal counsel to other groups also granted standing—women’s groups and human rights organizations—has also damaged the Commission’s ability to understand and address systemic issues. The concerns regarding standing, participation, funding, and representation are discussed in detail below.

1. Standing and Failure to Ensure Civil Society Participation

The Inquiry process in Canada allows groups and individuals to apply for standing in an inquiry. Applicants are accepted as participants in the Inquiry if their interests are affected by a Commission’s findings.⁶⁶ Interest is assessed based on the Commission’s subject matter, as described in its Terms of Reference and the Public Inquiry Act.⁶⁷ Individuals and organizations can be granted different levels of standing, depending on their interest and expertise. In the Missing Women Commission of Inquiry, those granted full standing were entitled to cross-examine all witnesses; those granted limited standing could seek permission to cross-examine select witnesses.

After inviting groups and individuals to apply for standing in the inquiry, the Commissioner of the Missing Women Commission of Inquiry granted full and limited standing to 13 groups to participate in the Inquiry.⁶⁸ Among the groups granted standing were NWAC and other Aboriginal and women’s rights groups. NWAC was the only Aboriginal organization granted full standing, and the Commissioner stated in his ruling that: “NWAC has spent nearly ten years gathering evidence and information related to missing and murdered Aboriginal women across Canada. [NWAC has] a direct interest in

the outcome of this hearing and a large role to play in ensuring that the voice of Aboriginal women is represented in the Inquiry process.⁶⁹

Historically in Canada, if standing is granted, funding for legal counsel is provided. Standing and funding are inseparable. Here, Commissioner Oppal recommended to the British Columbia Attorney General that funding for legal counsel be provided to the 13 groups granted full and limited standing in the Inquiry, based on their level of involvement; thus, full participants would receive more funding than limited participants.⁷⁰

On May 19, 2011, the Attorney General announced that the Government of British Columbia would provide funding for one lawyer to represent some of the families of women murdered by Robert William Pickton, but it would not provide funding to any of the other groups granted standing by the Commissioner, including NWAC.⁷¹ To date, there has been no other case in Canada where a government, having appointed a Commission of Inquiry, then, in effect, overturned a Commissioner's decision on standing by refusing funding for participation.⁷²

While the Vancouver Police Department, the Criminal Justice Branch of the Attorney General's Ministry, and the Royal Canadian Mounted Police (RMCP) are represented by publicly-funded legal counsel, NWAC and other civil society groups were denied the funds necessary for representation by legal counsel. Commissioner Oppal criticized the Attorney General's decision to deny funding by lamenting that "it would be the height of unfairness to require unrepresented individuals to cross-examine police who are represented by highly qualified counsel."⁷³

2. Impact of lack of funding

The British Columbia Missing Women Commission of Inquiry is the first and only official inquiry in Canada to examine even a small number of the disappearances and murders of Aboriginal women in one location. However, because of the denial of funding for legal counsel, the Native Women's Association of Canada was forced to withdraw from the inquiry, as were most groups that were granted standing, including the Women's Equality and Security Coalition, the Native Courtworkers Association, the Union of B.C. Indian Chiefs, the Carrier Sekani Tribal Council, the West Coast Women's Legal Education and Action Fund, the End Violence Association, and others.⁷⁴ All but two of the groups granted standing have withdrawn because they cannot participate without counsel, or because the process has become so unfair that they feel it would be unconscionable to participate.⁷⁵ All the groups with systemic knowledge and information about the conditions of Aboriginal and other marginalized groups of women were, in effect, shut out of the process.

3. Discriminatory Representation of Aboriginal Women

After the Government of British Columbia's refusal to provide funding for legal counsel to NWAC and other Aboriginal organizations, as well as organizations that served women in the Downtown Eastside, it became clear that none of these groups could participate in the Inquiry. On August 11, 2011, the Commission, on its own initiative,

hired two “independent” counsel—one to represent the Downtown Eastside community of Vancouver, and one to represent the interests of Aboriginal women.⁷⁶ Instead of correcting the problem of the exclusion of the groups granted standing, the appointment of these so-called “independent counsel,” worsened it. Not only were NWAC and other Aboriginal and women’s organizations denied funding for legal counsel, and consequently, effectively excluded from the fact-finding hearing and rendered voiceless; now, outside counsel whom they could not control or instruct were purportedly speaking “for them,” without any consultation.

The Inquiry began its hearings on October 11, 2011. Advocates for Aboriginal women and women from the Downtown Eastside, including the Women’s Memorial March and the Downtown Eastside Women’s Centre, protested, claiming that the process is fundamentally unfair and treats the most marginalized women as though their knowledge and participation does not matter.⁷⁷ On March 6, 2012, Robyn Gervais, the “independent counsel” who was appointed to speak for Aboriginal women, withdrew from the Inquiry, citing amongst her reasons for withdrawal: delay in calling Aboriginal witnesses, lack of support for her position from the Aboriginal community, the failure to provide adequate hearing time for Aboriginal panels, and the disproportionate focus on police evidence at the Inquiry.⁷⁸

Today, 25 publicly-funded lawyers represent police and government at the Inquiry, while there are only two publicly-funded lawyers for family members of Pickton’s victims. There were and are no publicly-funded lawyers at the Commission retained by any Aboriginal parties. *There are now no Aboriginal organizations participating in the British Columbia Missing Women Commission of Inquiry.*

This Inquiry, which many hoped would be an opportunity for careful scrutiny of the conduct of police and justice officials, and of the factors which turn Aboriginal women into prey for violent men, cannot fulfill these expectations. The Missing Women Commission of Inquiry may provide some answers for some families of women murdered by Robert William Pickton, but it cannot now address larger systemic issues.

Commissioner Oppal stated on March 6, 2012 that the Missing Women Commission of Inquiry is concerned with policing, not with poverty or colonization. He also dismissed Ms. Gervais’ concern that, because of the way the Commission has proceeded, he does not have the evidence before him that would allow him to make a finding that there was systemic racism inherent in the failures to respond and investigate the many reports of missing women.⁷⁹ His statements imply that policing can be separated from the history and social context of the society in which the policing is being performed and from the realities of the lives of those who need protection. The Inquiry has become a continuation of the discrimination against the most vulnerable women, not a correction of it.

V. STATE RESPONSE: MEASURES TAKEN BY THE GOVERNMENT OF CANADA

The Federal Government of Canada has also taken a number of steps in response to the growing concern about the disappearances and murders of Aboriginal women and girls nationwide.

1. 10 Million Dollars in Funding

In the March 2010 Budget, the Government of Canada allocated \$10 million to combat violence against Aboriginal women. This amount represents less than 0.1% of the \$280.5 billion of planned total expenditure for the fiscal year 2010-2011. The Budget stated that the money was being allocated “to address the disturbingly high number of missing and murdered Aboriginal women,” and also stated “[c]oncrete actions will be taken so that law enforcement and the Justice system meet the needs of Aboriginal women and their families.”⁸⁰

Of this \$10 million, \$4 million was given to the Royal Canadian Mounted Police (RCMP) to: establish a National Police Support Centre for capturing additional missing persons data; enhance the Canadian Police Information Centre (CPIC) to capture additional missing persons data; create a national registry for missing persons and unidentified remains; and create a national Web site to encourage the public to provide tips and information on missing persons.⁸¹

Other monies were assigned to other federal government departments to give out in small grants for short-term school and community-based pilot projects to provide alternatives to high-risk behavior for young Aboriginal women, adapt victim services, develop community safety plans and identify best practices for addressing violence against Aboriginal women.⁸²

At the same time, the Government of Canada informed NWAC that it would no longer fund Sisters In Spirit, although it is widely acknowledged, including by the federal Minister Responsible for the Status of Women, the Honourable Rona Ambrose, that NWAC’s research has broken open the issue of missing and murdered Aboriginal women and girls, and continues to provide the most reliable information on the subject in Canada.⁸³

The Government of Canada also provides funds for other community-based victim services, some shelters, and some “empowerment programs” directed to Aboriginal women and girls. These are listed by Canada in its follow-up report to the United Nations CEDAW Committee,⁸⁴ its recent report to the CERD Committee,⁸⁵ and in the Final Report of the House of Commons Standing Committee on the Status of Women referred to *infra*.

2. Parliament of Canada, House of Commons Standing Committee on the Status of Women, Study on Violence against Aboriginal Women and Girls - Interim Report

Certain entities of the Government of Canada itself have recognized that there is a significant problem of violence against Aboriginal women that has been inadequately addressed by authorities. In March 2010, during the 40th Parliament, the House of Commons Standing Committee on the Status of Women undertook a study on violence against Aboriginal women. The Committee heard from over 150 witnesses, including representatives of Aboriginal organizations, academics, service providers, and Aboriginal women themselves. The Committee's Interim Report underscores not only the severity of the problem of violence against Aboriginal women and the ill-treatment of these women by police and judicial officers, but also factors contributing to the situation, such as poverty, punitive child welfare policies, inadequate housing, and racism.⁸⁶

The Committee reported that it heard from witnesses of "failure by police to take reports of missing women and murdered Aboriginal women seriously, delays in investigation, and the lack of effort put into searches and public appeals" and that "jurisdictional wrangling between on-reserve police forces, city or provincial forces and the Royal Canadian Mounted Police can jeopardize investigations."⁸⁷ The report recognized that "police sometimes dismiss claims of sexual assault if the woman is Aboriginal and leads a 'high-risk lifestyle.'"⁸⁸ Furthermore, the Committee acknowledged that "it is impossible to deal with violence against Aboriginal women without dealing with all of the other systems which make women vulnerable to violence" and recognizes the need for a coordinated, holistic approach.⁸⁹

However, the 40th Parliament was prorogued for an election in April, and a new session of Parliament began on June 2, 2011. The Conservative Party of Canada, which had been in a minority position in the 40th Parliament, won a majority of seats. The House of Commons Standing Committee on the Status of Women was reconstituted with new Members of Parliament. The newly composed Committee now has only two members who actually heard the testimony of Aboriginal women and Aboriginal organizations. Nonetheless, on December 12, 2011, the newly composed Standing Committee issued a Final Report on violence against Aboriginal women.⁹⁰ This report abandons the approach adopted in the Interim Report. The Final Report does not reflect the evidence presented by Aboriginal women, and makes no recommendations that will effectively address the issue. Amnesty International issued a statement on this report, which notes:

[The] new report by the House of Commons Standing Committee on the Status of Women offers no real solutions to the widespread threats to the lives of Indigenous women in Canada. Instead, the report represents one more lost opportunity to make progress in meaningfully addressing one of the country's most serious, longstanding human rights crises. Last March, the Committee issued an interim report that called for a comprehensive, strategic and coordinated approach to end the vastly disproportionate rates of violence against Indigenous women. The final report tabled in

Parliament today drops the call for a comprehensive response and instead focuses primarily on government initiatives that are already underway.⁹¹

While some of the measures taken by the Government of Canada are useful, they are piecemeal, uncoordinated and do not amount to an effective, coordinated, multi-jurisdictional strategy for dealing with either police failures to prevent, protect, prosecute, punish and remedy the violence, or the profound social and economic disadvantages of Aboriginal women and girls which are root causes and contributing factors to the violence.

VI. THE CONTEXT OF DISCRIMINATION AND MARGINALIZATION OF ABORIGINAL WOMEN IN BRITISH COLUMBIA AND NATIONWIDE

1. Social and Economic Marginalization of Aboriginal Women and Girls throughout Canada

The widespread patterns of violence against Aboriginal women and girls occur in the context of colonization and its impacts, including the loss of traditional lands, cultures and languages, long-standing and continuing sex discrimination against Aboriginal women, which is entrenched in the *Indian Act*, and an intergenerational cycle of violence resulting from abuse and mistreatment of Aboriginal children who were forced into residential schools in Canada.

Aboriginal women and girls are among the most socially and economically disadvantaged groups in Canada. 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.⁹² 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.⁹³

For example, 28% of Inuit women and girls, 28% of First Nations, and 14% of Metis live in inadequate housing (requiring major repairs) compared to 7% of non-Aboriginal women and girls.⁹⁴ Additionally, Aboriginal women on average have lower levels of education and income compared to non-Aboriginal women. In 2006, 35% of Aboriginal women aged 25 and over had not graduated from high school, compared to 20% among non-Aboriginal women.⁹⁵ Nine percent of Aboriginal women had a university degree compared to 20% of non-Aboriginal women.⁹⁶ Unemployment rates are twice as high (in 2006) for Aboriginal women as their non-Aboriginal counterparts and there was a sharper decrease in employment for Aboriginal people during the labor market downturn in 2008 and 2009, further widening an already existing gap between the groups.⁹⁷ Further, in 2005, the median income for Aboriginal women was \$15,654 compared to \$20,640 for non-Aboriginal women, and one quarter of Aboriginal women's income came from government transfer payments, including 9% of all income of Aboriginal women coming from child benefits in 2005.⁹⁸ In 2005, 37% of First Nations women living off reserve

had incomes below Canada's low-income cut-off; in other words, they were living in poverty.⁹⁹ This is double the poverty rate for non-Aboriginal women.

In the context of restricted options and inadequate choices, Aboriginal women and girls are coerced into situations that increase their vulnerability to violence, such as hitch-hiking, prostitution, gang involvement or abusive relationships.¹⁰⁰ There are high rates of homelessness among Aboriginal women and girls, which also makes them vulnerable to violence.¹⁰¹ Poverty coerces women and girls into prostitution or into accepting unwanted sexual advances to try to keep their apartments, to pay monthly expenses, such as heat and electricity, or to buy food or drugs. In prostitution, the risk of violence is high.¹⁰² Engagement in prostitution or "survival sex" is a reflection of the overall economic and social marginalization faced by Aboriginal women and girls, and increases their levels of vulnerability to coercion, abuse and violence.

Not only do these social and economic conditions specifically push women into situations of increased vulnerability, but many Canadian reports also underscore the strong links between violence against women and economic disadvantage.¹⁰³ For example, studies have found that women in Canada stay in abusive relationships or return to violent partners because social assistance rates are inadequate to permit them to support themselves and their children, and they cannot find or afford adequate housing. In addition, if living in poverty is the only available option for women who leave abusive partners, they fear losing their children to child welfare authorities who deem their poverty to be 'neglect.' If women and girls are homeless or if they live in communal shelters, the risks to them are well known. These precarious circumstances increase women's vulnerability to sexual assault and sexual harassment.¹⁰⁴

Notably, the social and economic marginalization of Aboriginal women and girls in Canada not only makes them easy prey for violent perpetrators, but is also used by officials as a justification for failing to protect them. Police often use discriminatory attitudes, such as Aboriginal women are "transient," live a "risky lifestyle," or "will show up when they want to" to justify failure to respond to reports of missing women.¹⁰⁵ The discrimination and indifference by both society and authorities in Canada toward Aboriginal women and girls results in impunity for the crimes done to them and is both a cause and a consequence of the violence. The circumstances in which Aboriginal women and girls live contribute significantly not only to the creation of, but also the perpetuation, of this violence.

2. Culture of Discrimination against Aboriginal Women and Girls in the British Columbia Criminal Justice System

British Columbia's criminal justice system "consists of the police, prosecutors, the courts, correctional services, and parole boards. Under Canada's Constitution, the provinces and the federal government share responsibility for the criminal justice system. ...The Royal Canadian Mounted Police (RCMP) acts as a federal police force. Under contractual agreements, it also provides policing services to all provinces and territories except Quebec and Ontario, who have their own provincial police forces. Generally, larger municipalities have their own police forces."¹⁰⁶

As detailed above, Aboriginal women are among the most marginalized within Canadian society. This overall discrimination is reflected within the criminal justice system in British Columbia—including the judiciary, police forces, and prosecutors’ offices. Many of the communities in which women and girls have gone missing or have been murdered are also communities in which Aboriginal women and girls have reported sexual and physical abuse by police.¹⁰⁷

A. The Judiciary in British Columbia

There is a general and long-standing concern in Canada that Aboriginal people are over-policed and under-protected. As a result, Aboriginal people are significantly over-represented in Canada’s prison population. More than one in five individuals placed in custody is Aboriginal, and Aboriginal women represent 28% of women remanded and 37% of women sentenced to custody, although they are only about 4% of the Canadian population.¹⁰⁸ In British Columbia, 47% of youth in custody are Aboriginal, although Aboriginal individuals comprise only 8% of the youth population in the province.¹⁰⁹ These figures among youth are reflected nationwide. In 2008-2009, Aboriginal female youth comprised 6% of the Canadian female population, but 44% of female youth in sentenced custody were Aboriginal. The percentage of Aboriginal girls incarcerated has been growing in recent years and that trend seems likely to continue.¹¹⁰

There are several sentencing practices that adversely impact women and girls, and in particular Aboriginal women and girls, who are disproportionately represented in the system. For example, women who are arrested on charges related to prostitution “are rarely given diversion programs, while male consumers are often given opportunities for ‘john school.’ The result is that Aboriginal women end up with criminal records, pushing them into a deeper spiral of marginalization.”¹¹¹

Also, judges often use criminal sanctions and incarceration as a means of ensuring treatment of young female offenders for perceived psychological and social problems for which boys would not likely be sentenced. The youth justice system “views girls to be in greater need of protection than their male counterparts, and employs discretionary powers to control female behavior.”¹¹² Additionally, judges tend to use their discretion to place young women in custody for non-compliance and administrative breaches and child-welfare type concerns, which some advocates argue are “key indicators of systemic bias in the criminal justice system.”¹¹³

Discriminatory bias by judges is particularly concerning given that judicial independence is a cornerstone of the Canadian justice system. Judges are truly self-regulating and removal and punishment is rare. Recently, a judge who made comments suggesting the victim of a sexual assault wore provocative clothing was left unscathed after giving assurances about his future behavior.¹¹⁴

Although discriminatory behavior by judges tends to be less overt and more subtle, systemic, and structural in nature, there are still instances of overtly egregious and

disturbing actions by judges. For example, provincial court judge David Ramsay was found guilty of brutal sexual and physical violence against Aboriginal girls aged 12-16 whom he presided over in youth criminal and family courts.¹¹⁵ Overall, at least 20 Aboriginal girls came forward accusing Ramsay and other criminal justice officials of sexual and physical abuse—including being slapped, raped, threatened with death, verbally abused, robbed, and left naked on a highway—in Prince George, British Columbia. Prince George is one of the cities centrally located along the Highway of Tears.¹¹⁶

The case of Judge Ramsay may be characterized as heinous actions of a single individual; however, it is important to note the structures that not only allowed for the situation to continue but also perpetuated the violence. Judge Ramsay was allowed to remain on the bench for three years after investigations began, a time during which he continued to abuse girls.¹¹⁷ Other officials in Prince George, including nine police officers, a youth/family lawyer, and a prison guard, were also accused at the same time of sexually exploiting or abusing Aboriginal girls—but no action has been taken against them. Additionally, related internal police disciplinary hearings against two of the police officers were dismissed because the police waited too long to launch the hearings.¹¹⁸

B. The Police in British Columbia

As described above, the Royal Canadian Mounted Police (RCMP) provides policing under contract between British Columbia and the federal government, although some cities have municipal police forces.¹¹⁹ The majority of cases of missing and murdered Aboriginal women in BC involve the RCMP (55%), followed by municipal police forces (39%). At least 6% of cases were found to involve more than one detachment or police service.¹²⁰

Several practices and individual incidents within both RCMP and municipal forces are indicative of underlying misogynistic and racist attitudes and institutional culture. In British Columbia, and in particular Vancouver, police often blame women and girls for choosing a dangerous lifestyle and say that they must live with the consequences.¹²¹ Additionally, when girls attempt to escape violence within the family home, police tend to respond in a discriminatory manner by returning these girls back to the home where the abuser remains, while rarely removing the abuser—often an adult male—from the home or pursuing criminal prosecutions.¹²²

There is also evidence of ill treatment of girls and women when in custody. Females in custody are frequently shackled during transport and in some facilities it is policy for both male and female officers to perform pat downs. In both rural and city facilities, cells are monitored by camera—and frequently by male guards—so there is no privacy when occupants need to use the facilities or change clothes. Young women are also frequently denied basic necessities, such as the opportunity to shower or brush their teeth, and denied feminine hygiene products even when requested.¹²³ Some Aboriginal girls have reported being stalked and harassed by a male officer and being denied food and water for extended periods (16-24 hours) while in custody.¹²⁴ All of these experiences have a

disparate effect on Aboriginal girls, as Aboriginals disproportionately represent the number of youth in custody.¹²⁵

There are also recent and widespread reports regarding sex and race discrimination and sexual harassment inside both the RCMP and municipal police forces. Reports include sexual harassment of female staff, female officers being singled out because they have reported concerns about police conduct, and male officers viewing and sharing pornographic material on office computers. These patterns of conduct, coupled with the low representation of women and Aboriginal people in police forces, raises an inference that there is a discriminatory culture inside these police departments.¹²⁶ Female RCMP Officers have recently come forward to denounce widespread sex and race discrimination and harassment in the RCMP, and a class action suit is expected. Allegations of systemic sex and race discrimination inside the force suggest systemic problems that necessarily affect the RCMP's competence to deal effectively with violence against Aboriginal women and girls in the community.

Constable Catherine Galliford, who worked with the RCMP's Missing Women Task Force, recounted to the media on November 23, 2011 that, along with other forms of sexual harassment, "perhaps the most chilling thing that happened to her...came after the gruesome details had begun to emerge about how Pickton butchered women and scattered their remains at his Port Coquitlam farm or dumped them at an East Vancouver rendering plant, West Coast Reduction. A group of RCMP personnel were, she said, "constantly 'making jokes about sex toys,' laughing and giving each other 'fist bumps.' The officers wanted to tell her about 'their fantasy.' They wanted to see Willie Pickton escape from prison, track me down and strip me naked, string me up on a meat hook and gut me like a pig."¹²⁷

There has also been a recent incident of excessive force allegations against a police officer in British Columbia, who allegedly punched a 17-year-old Aboriginal girl, Jamie Haller, in the face while she was handcuffed in the back of a police vehicle.¹²⁸ This same officer had earlier been disciplined for firing his handgun while intoxicated in a hotel room following a telephone conversation with his girlfriend. This incident highlights the apparent "lack of police disciplinary processes to remove police officers who are clearly dangerous to women and girls."¹²⁹

C. The Prosecutor's Office in British Columbia

Failure to pursue prosecution, at least in part because of discriminatory views about the victims, is an issue in British Columbia. For example, in the Pickton case, *supra*, prosecutors chose early on to not charge Pickton for attempted murder of a sex worker because, despite other circumstantial evidence, the woman was deemed "not credible" and her testimony was judged as insufficient to hold up in court.¹³⁰

The above examples of systemic bias, discriminatory policy and practice, and overt individual incidents—are indicative of both sex and race discrimination in the British Columbia criminal justice system. Aboriginal women, who live at the intersection

between race and gender discrimination, experience the impact of the discriminatory treatment and the failures to protect and investigate violence against them.

3. Social Programs

Canada is a federal state with separate legislative jurisdictions assigned to the federal government and to the provincial governments. Social programs and social services, which are the vehicle for addressing the social and economic disadvantage of Aboriginal women and girls, have both provincial and federal involvement. The lines of responsibility with respect to Aboriginal peoples, however, are not always clear or agreed upon, and the lives of Aboriginal women and girls are marred by wrangling between different levels of government over which one is responsible for providing a service, program, benefit, or support that is needed. Aboriginal women and girls are often denied essential forms of assistance or receive piece-meal services because of competing and overlapping federal, provincial, and territorial responsibilities for providing services to Aboriginal peoples.¹³¹ Yet, the federal government, as a funding source for social programs for Aboriginal people living on and off reserve in British Columbia, has a financial, social, and legal responsibility to ensure the rights of all are respected.

VII. THE GOVERNMENT OF CANADA HAS CONTRAVENED MANY OF ITS INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS TO PROTECT, INVESTIGATE, AND PUNISH PERPETRATORS WITH REGARD TO ACTS OF VIOLENCE AGAINST ABORIGINAL WOMEN

Petitioners believe that there have been serious violations of the human rights of Aboriginal women and girls under numerous international and regional human rights obligations, including the American Declaration on the Rights and Duties of Man (“Declaration”), including: the right to life, which includes “having access to the conditions that guarantee a dignified existence,”¹³² (Art. I); the right to equality/non-discrimination (Article II); the right to protection of honor, personal reputation, and private and family life (Article V); the rights of the child (Article VII); the right to preservation of health and well-being (Article XI); and the right to access the courts and to justice (Article XVIII).

Although Canada has not yet ratified the principal Inter-American treaties, these failures would likely also amount to violations of the corresponding articles within the American Convention on Human Rights and contravene the goals of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”). Similarly, the actions and failures by the Government of Canada have contravened many standards found within the Inter-American and United Nations systems related to the duty to investigate, the obligation of non-discrimination, and special protections of vulnerable groups.

1. Duty to Investigate

International and regional human rights law places an obligation on states to fully and effectively investigate violations. The Inter-American Court of Human Rights found, in the *Velásquez Rodríguez* case, that the obligation under article 1.1 of the American Convention to ensure the full enjoyment of the rights and freedoms recognized by the Convention creates a positive legal duty on States to, “use all means at its disposal to carry out a serious investigation of violations committed within its jurisdiction.”¹³³ The Court has also held that the legal duty exists as a procedural requirement of substantive rights contained in the American Convention, such as the right to life and the right to humane treatment.¹³⁴ The Court has recently applied this principle concerning the duty to investigate in the *Cotton Field* case, regarding murders and disappearances of women in Juarez, Mexico.¹³⁵ The Court underscored that when authorities are aware of a situation of violence against women, authorities should “initiate, *ex officio* and without delay, a serious, impartial and effective investigation using all available legal means, aimed at determining the truth and the pursuit, capture, prosecution and eventual punishment of all the perpetrators.”¹³⁶ In dealing with the case of a woman who is killed or ill-treated or whose personal liberty is affected within the framework of a general context of violence against women, the Court found, the obligation to investigate has a wider scope.¹³⁷

This principle applies equally when considering State obligations under the American Declaration on the Rights and Duties of Man. Recently, the Inter-American Commission on Human Rights applied this reasoning in *Jessica Gonzales (Lenahan) v. United States*, regarding domestic violence. The Commission found that “investigations must be serious, prompt, thorough, and impartial, and must be conducted in accordance with international standards in this area.”¹³⁸ In addition, “the State must show that the investigation ‘was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth.’”¹³⁹

2. Obligation of Non-Discrimination

A. Inter-American System Standards

The State’s obligation not to discriminate is codified in every major human rights treaty and instrument. In the Inter-American system, Article II of the American Declaration on the Rights and Duties of Man requires States to treat “all persons [as] equal before the law...without distinction as to race, sex, language, creed or any other factor,” and Article 24 of the American Convention on Human Rights requires that all persons “are entitled, without discrimination, to equal protection of the law.”

In the *Cotton Field* case, the Inter-American Court examined the murder of three women in the context of mass violence against women and structural discrimination and found that gender-based violence constitutes gender discrimination.¹⁴⁰ The Court found that the “culture of discrimination” in Juarez—a State admission—coupled with actions and inactions by the authorities, amounted to violations of the obligation to not discriminate. These actions included law enforcement officers mentioning that the victims were “flighty” or had run away with their boyfriends, which, combined with the inaction at the

start of the investigation, results in indifference that reproduces the violence that it claims to be trying to counter.¹⁴¹

In *Lenahan*, the Commission found that the State's failure to protect was a form of discrimination, emphasizing that "these systemic failures are particularly serious since they took place in a context where there has been a historical problem with the enforcement of protection orders; a problem that has disproportionately affected women—especially those pertaining to ethnic and racial minorities and to low-income groups—since they constitute the majority of the restraining order holders."¹⁴²

B. CEDAW Standards

Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that States "condemn discrimination in all its forms" and pursue the elimination of discrimination against women "by all appropriate means and without delay." In its General Recommendation 19, the CEDAW Committee underscored that the definition of discrimination against women "includes gender-based violence, that is, violence that is directed against a woman [i] because she is a woman or [ii] that affects women disproportionately."¹⁴³

The CEDAW Committee has further underscored three obligations that are central to States' efforts to eliminate discrimination against women: (1) ensure that there is no direct or indirect discrimination against women in their laws (2) improve the de facto position of women through concrete and effective policies and programs; and (3) address prevailing gender relations and the persistence of individual and structural-level gender-based stereotypes.¹⁴⁴

The Committee notes that a purely formal legal approach is not sufficient to achieve de facto, or substantive, equality. States should aim to achieve equality in results and take measures toward a real transformation of "opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns."¹⁴⁵

The Committee also underscores that certain groups of women suffer from multiple forms of discrimination not only based on gender but also other factors, such as race, age, or class. This type of discrimination may affect women more or in different ways than men and States may need to take special measures to "eliminate such multiple forms of discrimination against women and its compounded negative impact on them."¹⁴⁶

3. Special Protections for Vulnerable Groups

A. Inter-American Standards

Inter-American jurisprudence establishes as a cornerstone principle that States must exercise due diligence to prevent, investigate, and punish perpetrators of acts of violence against women,¹⁴⁷ while upholding their obligations to ensure non-discrimination (including for groups, such as Aboriginal women, that may experience "intersectional" forms of discrimination) and special protections for vulnerable groups.¹⁴⁸ In recent

jurisprudence, the Court has considered violations of the Convention Belem do Para in light of the particular vulnerabilities of the victims (e.g. indigenous women).¹⁴⁹

B. United Nations Standards

Various standards within the United Nations system have underscored special protections for certain vulnerable groups, particularly indigenous peoples and women and children. There has also been an increasing focus on the intersections of gender and race discrimination, as is evidenced within the U.N. Declaration on the Rights of Indigenous Peoples and the CERD Committee’s General Comment 23 on Indigenous Peoples and General Comment 25 on the Gender-Related Dimensions of Racial Discrimination.

UN Declaration on Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples underscores several basic rights of indigenous individuals and groups, including the right to be free from any kind of discrimination in the exercise of their rights; the rights to life, physical and mental integrity, liberty, and security of person; and the right to participate in decision-making matter which would affect their rights and to maintain and develop their own indigenous decision-making institutes.¹⁵⁰ The Declaration also provides for certain special protections and calls for States to take certain special measures on behalf of indigenous populations. For example, Article 21 reiterates that indigenous peoples have the right to improvement of their social and economic conditions and requires States to take special measures to ensure continuing improvement of these conditions, particularly for those with special needs, such as elders, women, and youth.¹⁵¹ Article 22 also underscores the importance of recognizing the rights and special needs of indigenous elders, women, youth, and persons with disabilities, but also, notably, requires States to take “measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.”

CERD Committee—General Recommendation 23 on Indigenous Peoples

The CERD Committee’s General Recommendation 23 on Indigenous Peoples reaffirms that discrimination against indigenous peoples falls under the scope of the Convention and that “in many regions of the world indigenous peoples have been, and are still being discriminated against and deprived of their human rights and fundamental freedoms....”¹⁵² The CERD Committee calls on States parties to “ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity.”¹⁵³ It also importantly calls on States parties to ensure that “members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interest are taken without their informed consent.”¹⁵⁴

CERD Committee—Intersection of Gender and Racial Discrimination

The CERD Committee’s General Recommendation No. 25 on gender-related dimensions of racial discrimination underscores that racial discrimination does not always affect men and women equally or in the same way.¹⁵⁵ The Committee emphasizes that racial

discrimination may be directed towards women specifically because of their gender, and gives examples of coerced sterilization of indigenous women, sexual violence against women of a particular race or ethnic group in detention or during armed conflict, and abuse of women in the informal employment sector.¹⁵⁶ The Committee also emphasizes that many consequences of racial discrimination primarily affect women, giving examples such as pregnancy resulting from racially-motivated rape and a lack of remedies for racial discrimination due to gender bias or gender-related impediments in the legal system.¹⁵⁷

4. The Government of Canada Has Failed to Comply with its International Human Rights Obligations.

The Governments of British Columbia and Canada have failed in their obligation to exercise due diligence to adequately prevent violence against Aboriginal women and girls, investigate reports of disappearances and murders, and bring perpetrators to justice. Authorities, and in particular the federal government, have failed to implement a comprehensive, national plan to stop this violence, including measures such as training, protocols, systems for disaggregated data collection, coordination across jurisdictions, and accountability mechanisms. Violence against Aboriginal women and these subsequent police failures are integrally linked to the fact that Aboriginal women are amongst the most discriminated against and socially and economically disadvantaged groups in Canadian society. This failure is even more egregious given international human rights standards that encourage and require States to provide special protections for vulnerable groups, a category into which these marginalized Aboriginal women quintessentially fit.

VIII. CONCLUSION AND RECOMMENDATIONS

To date, the Inter-American Commission on Human Rights has not examined the systematic murders and disappearances of Aboriginal women and girls in British Columbia or Canada generally. This crisis situation closely parallels that considered by the Inter-American Commission and Court in the *Campo Algodonero (Cotton Field)* case, focused on Juarez, Mexico. A thematic hearing is an effective means through which to turn regional and international attention toward this critical human rights issue in Canada and throughout the hemisphere. Petitioners hope this hearing will encourage the Government of Canada to engage with Aboriginal women and representative organizations to establish a national inquiry into missing and murdered Aboriginal women and girls so that the facts, and all of the factors causing the violence and the failures of all levels of government to deal with it can be aired. A national will to end the violence needs to be forged so that Canada can develop and implement a comprehensive, coordinated plan of action in keeping with the scale and seriousness of the violence and discrimination experienced by Aboriginal women and girls.

In order to fulfill Canada's international human rights obligations to prevent, investigate, and punish acts of violence perpetrated against Aboriginal women and girls, the Government of British Columbia and the Government of Canada should take immediate and comprehensive action in line with the recommendations set forth below.

We urge the Commission to make the following recommendations to the British Columbian and Canadian governments:

- Urge Canada to initiate a national inquiry: Canada should initiate an inquiry into the disappearances and murders of Aboriginal women and girls throughout the country that will lead to the design of national, cross-jurisdictional mechanisms and protocols for police and justice officials. This national inquiry should include a review of practices and measures related to child welfare, social assistance, housing, criminal justice, policing, and incarceration and identify where systemic correction is needed to dismantle institutionalized sexism and racism.
- Urge Canada to immediately develop a strong action plan: Canada should develop a national action plan to address the crisis of violence against Aboriginal women and girls, in partnership with NWAC and other Aboriginal and women's organizations.
- Urge Canada to design and implement appropriate policies: Canada should design and implement appropriate policies to ensure inter-jurisdictional and inter-agency coordination of policing and law enforcement, with a view to preventing disappearances and violence against Aboriginal women and girls and producing faster and more efficient response times.
- Urge Canada to cooperate with relevant civil society groups: Canada should cooperate with civil society groups endeavoring to end violence against Aboriginal women and girls in Canada and ensure that Aboriginal women's organizations, Aboriginal organizations, and communities have stable and adequate funding so that they can participate fully and take the lead in the development of policies that affect them.
- Urge Canada and British Columbia to ensure full and robust participation within national and provincial inquiries: Canada and British Columbia should ensure that individuals and groups, particularly Aboriginal women, are granted standing and receive public funding in order to guarantee full and robust participation in a national inquiry and any other related commissions or inquiries that may arise in the future. Participants should also be ensured the right to choose their own representatives within the inquiry.
- Urge Canada to ensure that Aboriginal women and girls have access to legal aid and other funding: Canada should ensure that Aboriginal women and girls have access to legal aid and other funding so that they are free to exercise their right to choose their own representatives so as to participate fully and adequately in any sort of legal or administrative process in which their rights are being determined or affected.
- Urge Canada to develop and implement a strategy to address social and economic conditions: Canada should immediately develop and implement a strategy to

address the disadvantaged social and economic conditions of Aboriginal women and girls, including poverty, inadequate housing, low educational attainment, inadequate child welfare policies, and over-criminalization.

- Urge Canada and British Columbia to establish improved federal, provincial, and territorial police accountability mechanisms: Canada should establish improved accountability mechanisms for both federal and provincial police forces that include both civilian oversight and civilian investigation, particularly for adherence with constitutional requirements of equal protection and access to justice.
- Urge Canada to establish a federal mechanism for investigations into misconduct and discrimination within the criminal justice system and police forces: Canada's Department of Justice should establish a mechanism for investigating allegations of misconduct or discrimination within the federal, provincial or territorial components of the criminal justice system, and holding accountable those entities who commit acts of misconduct or discrimination.

Petitioners also encourage the Commission to conduct a site visit to Canada to examine and document the situation of murders, disappearances, and massive levels of violence against Aboriginal women and girls.

Respectfully Submitted,

March 16, 2012



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¹²⁷ Suzanne Fournier, *Cops watched porn, skipped work instead of investigating missing women: Galliford*, The Province (Nov. 23, 2011), available at <http://www.theprovince.com/news/Cops+watched+porn+skipped+work+instead+investigating+missing+women+Galliford/5752470/story.html#ixzz1pEF0KuMG>.

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- ¹²⁹ Justice for Girls, *Human Rights Violations against Indigenous Teen Girls in British Columbia* at 5 (October 2011).
- ¹³⁰ Editorial, *Pickton was a Monster We Allowed to Go Free*, *The Globe and Mail* (Aug. 5, 2010) available at <http://www.theglobeandmail.com/news/opinions/editorials/robert-pickton-was-a-monster-we-allowed-to-go-free/article1663499/>.
- ¹³¹ 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 United Nations Committee on the Elimination of Discrimination Against Women*, (September 2008) at 6-7, 10-11, available at <http://povertyandhumanrights.org/2008/04/inaction-and-non-compliance-british-columbia%E2%80%99s-approach-to-women%E2%80%99s-inequality/>.
- ¹³² *Street Children case* (Villagrán Morales et al.), 1999 Inter-Am. C.H.R. (ser. C) No. 63, at ¶ 144 (Nov. 19, 1999).
- ¹³³ *Id.* at ¶ 12.
- ¹³⁴ *Id.*
- ¹³⁵ *Gonzalez et al. v. Mexico (Cotton Field)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 at ¶ 289 (Nov. 16, 2009).
- ¹³⁶ *Id.* at ¶ 293.
- ¹³⁷ *Id.*
- ¹³⁸ *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11 at ¶ 181 (2011).
- ¹³⁹ *Id.*
- ¹⁴⁰ *See generally*, *Gonzalez et al. v. Mexico (Cotton Field)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009) ¶¶ 283, 293. The Commission's most recent decision on violence against women reaffirmed violence against women as a form of gender discrimination. *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11 (2011).
- ¹⁴¹ *Cotton Field supra* note 140 at ¶ 400.
- ¹⁴² *Lenahan supra* note 140 at ¶ 161.
- ¹⁴³ CEDAW Committee, *General Recommendation 19: Violence against Women*, (11th Session 1992), U.N. Doc .A/47/38 ¶ 6.
- ¹⁴⁴ CEDAW Committee, *General Recommendation 25: Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures*, UN Doc. A/59/38 (2004) ¶ 7.
- ¹⁴⁵ *Id.* at ¶¶ 8-10.
- ¹⁴⁶ *Id.* at ¶ 12.
- ¹⁴⁷ *Gonzalez et al. v. Mexico (Cotton Field)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (November 16, 2009); *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11 (2011).
- ¹⁴⁸ *See, e.g.*, *Gonzalez et al. v. Mexico (Cotton Field)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (November 16, 2009); *see also* Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, June 9, 1994. 27 U.S.T. 301, 1438 U.N.T.S. 63 (hereinafter "Convention Belem do Para").
- ¹⁴⁹ *See, e.g.*, *Fernandez Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 215 ¶ 185, 200 (Aug. 30, 2010) and *Rosendo Cantu and other v.*

Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216 ¶ 184, 169 (Aug. 31, 2010) (urging that in order to “guarantee access to justice to members of indigenous communities, it is indispensable that States offer effective protection that considers the particularities, social and economic characteristics, as well as the situation of special vulnerability, customary law, values, customs, and traditions” and that barriers to justice represent forms of “multiple discrimination”); Gonzalez et al. v. Mexico (Cotton Field), Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009).

¹⁵⁰ United Nations Declaration on the Rights of Indigenous Peoples, Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A. (2007) art 2, 7, 18.

¹⁵¹ *Id.* at art. 21.

¹⁵² Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples*, UN Doc. A/52/18, annex V ¶ 3 (Aug. 18, 1997).

¹⁵³ *Id.* at ¶ 4(b).

¹⁵⁴ *Id.* at ¶ 4(d).

¹⁵⁵ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25: Gender Related Dimensions of Racial Discrimination*, UN Doc. A/55/18, annex V. ¶ 1 (March 20, 2000).

¹⁵⁶ *Id.* at ¶ 2.

¹⁵⁷ *Id.*