

**Missing and Murdered
Aboriginal Women and Girls
in
British Columbia and Canada**

Lawyers' Rights Watch Canada and the B.C. CEDAW Group

**Submission to the United Nations Committee on the Elimination of
Racial Discrimination on the occasion of its review of Canada's 19th
and 20th reports
January 2012**

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Who we are

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC campaigns for advocates who are in danger because of their human rights advocacy, engages in research and education and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

The B.C. CEDAW Group is 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. The coalition first came together in 2002 to prepare a submission on the province of British Columbia for the United Nations Committee on the Elimination of Discrimination against Women, on the occasion of the Committee's 2003 review of Canada's Fifth Report under the United Nations *Convention on the Elimination of All Forms of Discrimination against Women*. The B.C. CEDAW Group subsequently made submissions regarding Canada's and British Columbia's compliance with international human rights obligations to women and girls to the Human Rights Committee in 2005, the Committee on Economic, Social and Cultural Rights in 2006, and the Committee on the Elimination of Discrimination against Women in 2008. The B.C. CEDAW Group also prepared submissions at the time of Canada's follow-up report to the CEDAW Committee in 2010, and participated with other non-governmental organizations in the Universal Periodic Review of Canada by the Human Rights Council in 2009.

The 2012 B.C. CEDAW Group includes:

The Poverty and Human Rights Centre
Coalition of Child Care Advocates of B.C.
Hospital Employees' Union
Justice for Girls
Vancouver Committee for Domestic Workers and Caregivers Rights
Vancouver Rape Relief and Women's Shelter
Canadian Association of Sexual Assault Centres, B.C. and Yukon Region
West Coast Women's Legal Education and Action Fund

Executive Summary

Aboriginal women and girls in Canada experience extremely high rates of violence and murder, serious and long-standing social and economic disadvantage, and lack of equal access to the protection of the law and remedies as a result of racial discrimination as defined in the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD),¹ and as a result of the intersection of gender and racial discrimination recognized by the Committee on the Elimination of Racial Discrimination in *General Recommendation No 25: Gender related dimensions of racial discrimination*.²

Canada's response has been inadequate, despite recommendations and calls for action by non-governmental organizations and international treaty bodies.

This report identifies areas of persistent racial discrimination against Aboriginal women and girls and highlights Canada's ongoing failure to:

- Ensure the "recognition, enjoyment or exercise, on an equal footing" of the rights and freedoms of Aboriginal women and girls as required by CERD, articles 1. 2.2 and 5(a), (e) iii, iv and v.
- Eliminate racial discrimination against Aboriginal women and girls as required by CERD, article 2.1 (a), (b) and (d).
- Take 'special and concrete' measures to review, identify and abolish discriminatory practices and to remedy consequences as required by CERD, articles 2.1 (c), (d), 2.2 and 6.

LRWC and the B.C. CEDAW Group recommend that Canada, in consultation with Aboriginal women's organizations, and other civil society groups, design and implement effective measures both to prevent and punish violence against Aboriginal women and girls and to remedy the underlying social and economic disadvantages which are contributing factors.

¹ CERD, Entry in to force, 1969, UN Treaty Series vol. 669, p. 195, ratified by Canada 14 October 1970. Article 1 of the Convention states: "...[R]acial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. "

² Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25: Gender related dimensions of racial discrimination: 03/20/2000*. This general recommendation recognizes that "there are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life." In the disappearances and murders of Aboriginal women and girls, gender and race discrimination are both contributing factors.

To address violence against Aboriginal women and girls, this submission recommends that Canada conduct a national inquiry on missing women and girls, develop a national action plan and implement policies to improve police and law enforcement practices and to ensure pan-Canada cooperation between them. To address social and economic disadvantages suffered by Aboriginal women and girls which contribute to the high incidence of violence and murder, this submission recommends that Canada take special measures to remedy poverty, inadequate housing, unequal education opportunities, punitive child welfare policies, and over criminalization. As an integral part of remediation, Canada must ensure that Aboriginal women and girls have access to legal representation of their choice in proceedings that affect or determine their rights.

Introduction

1. The disappearances and murders of Aboriginal women and girls in Canada is a national tragedy and a human rights crisis. Aboriginal, women's, anti-violence and human rights organizations have demanded accountability and action from the provincial, territorial and federal governments. However, Canada has taken no adequate action to address the violence, and the police and government failures involved. LRWC and the B.C. CEDAW group feel compelled to bring this vital issue to the attention of the CERD Committee in the hopes that increased international attention will help to achieve changes in government policies necessary to ensure the respect, protection and fulfillment of the rights of Aboriginal women and girls in Canada to equality and non-discrimination.
2. Violence against Aboriginal women and girls in Canada is extreme. Official statistics reveal that in 2009, close to 67,000 or 13 per cent of all Aboriginal women aged 15 and older living in the Canadian provinces stated that they had been violently victimized.³ Overall, Aboriginal women were almost three times more likely than non-Aboriginal women to report having been a victim of a violent crime. This was true whether the violence occurred between strangers or acquaintances, or within a spousal relationship.⁴ Between 1997 and 2000, homicide rates of Aboriginal females were almost seven times higher than non-Aboriginal females.⁵ According to a 1996 report by Indian and Northern Affairs Canada (INAC), Aboriginal women between the ages of 25 and 44 with Indian status are five times more likely than other women of the same age to die as the result of violence.⁶
3. Over the last 30 years hundreds of Aboriginal women and girls have disappeared or been murdered in Canada. The best data on disappearances and murders does not come from official sources, however, because the official Homicide Survey does not provide accurate data about homicides by Aboriginal status.⁷ The best data comes from a non-governmental organization, the Native Women's Association of Canada (NWAC), which, as of March 31, 2010, had documented 582 cases of missing and murdered

³ S. Brennan (2011), "Violent victimization of Aboriginal women in the Canadian provinces, 2009" Juristat, (Cat. No. 85-002-X). Ottawa, ON: Statistics Canada. Retrieved from <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.htm>.

⁴ *Ibid.*

⁵ Native Women's Association of Canada, *What Their Stories Tell Us: Research findings from the Sisters In Spirit initiative (2010)*, at 5. Online at: <http://www.nwac.ca/research/nwac-reports>.

⁶ Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada (2004)*, at 23, citing Aboriginal Women: A Demographic, Social and Economic Profile, Indian and Northern Affairs Canada, Summer 1996. Online at: http://www.amnesty.ca/campaigns/sisters_overview.php.

⁷ Statistics Canada, First Nations, Métis and Inuit women, Statistics Canada, July 2011, Vivian O'Donnell and Susan Wallace, at 42, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm>

Aboriginal women and girls in Canada.⁸ Fifty-five per cent of the murder cases and 43 per cent of the cases of missing women and girls occurred during or since 2000. NWAC continues to add new cases of missing and murdered women and girls to its database weekly.⁹ These numbers, though they are widely recognized as the most reliable, are based on information obtained primarily from media articles, police websites, and reported court decisions,¹⁰ and they do not reflect the actual number of missing and murdered Aboriginal women and girls in Canada, which is generally believed to be much higher.

4. British Columbia accounts for 160 cases (27 per cent) in NWAC's database 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.¹¹ Of the 160 cases in British Columbia:
 - 63 per cent are murder cases (homicide or negligence causing death)
 - 49 per cent of the murder cases remain unsolved, among the highest rate of unsolved cases in Canada
 - 24 per cent are cases of missing women and girls
 - 59 per cent are young women and girls under 31 years old, especially women aged 19-30
 - the majority of the missing and murdered women were mothers
 - most of the cases occurred in urban areas, particularly Vancouver, but including a number of cases in the Prince George area, and
 - almost half of persons charged were strangers or acquaintances, with only 10 per cent of cases involving an intimate partner or family member.
5. In British Columbia, since the mid-1990s, 69 women have been reported missing from Vancouver's Downtown Eastside, Canada's poorest neighbourhood. Many of these women were Aboriginal. Many were sex trade workers and particularly vulnerable to abuse and violence.¹²
6. In February 2002, Robert William Pickton was charged with the murder of 27 of these women in Vancouver. Pickton was tried and convicted for the murder of six women and

⁸ Native Women's Association of Canada, "Fact Sheet: Missing and murdered Aboriginal women and girls in British Columbia." Online at: http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf. As of March, 2009, 111 (21%) had been identified as First Nations, 2% as Métis, and 2% as Inuit. A total of 63% (325) of the cases are known to be Aboriginal, but NWAC has been unable to determine whether these women or girls identify specifically as First Nations, Métis or Inuit: Native Women's Association of Canada, *Voices of Our Sisters in Spirit: A Report to Families and Communities*, 2nd Edition, March 2009, at 90. Online at: <http://www.nwac.ca/research/nwac-reports>.

⁹ Despite the clear evidence that this is an ongoing issue, the federal government decided in the fall of 2010 to end funding to the Sisters in Spirit initiative.

¹⁰ NWAC, *What Their Stories Tell Us*, *supra* note 5, at 18.

¹¹ NWAC, "Fact Sheet", *supra* note 8, at 1.

¹² British Columbia, Canada. Missing Women Commission of Inquiry, "Ruling on Participation and Funding Recommendations, May 2, 2011", at 4. Online at: <http://www.missingwomeninquiry.ca/rulings/>.

sentenced to life in prison, without parole. There was evidence at trial that Pickton may have murdered as many as 49 women.¹³ Charges against Pickton for the murder of an additional twenty women were stayed in August 2010 on the basis that “any additional convictions could not result in any increase to the sentence that Mr. Pickton has already received.”¹⁴

7. In addition, since the 1970s, many teenage girls and young women, most of whom are Aboriginal, have disappeared or been murdered along Highway 16, a stretch of highway between Prince Rupert and Prince George, British Columbia.¹⁵ This highway is often called the “Highway of Tears” due to the killings and disappearances of Aboriginal girls and women along its route. The most recent official police count is 18 women and girls disappeared or murdered in the area and in similar circumstances.¹⁶ But victims’ families and advocates claim the true number is higher.

Economic and social disparities

8. Racialized patterns of poverty, lack of housing and social and economic marginalization of Aboriginal women and girls contribute to their increased vulnerability to violence. These systemic disadvantages are rooted in Canada’s colonial history and over 100 years of discriminatory (and non-consensual) laws and practices, including laws that:
 - prohibited Aboriginal cultural and religious practices;¹⁷
 - denied voting rights for ‘Indian’ people;¹⁸
 - denied ‘Indians’ the right to be considered ‘a person’;¹⁹
 - denied the right to legal representation;²⁰
 - authorized the forcible removal of children;²¹

¹³ *Ibid.*

¹⁴ CBC News, “Robert Pickton won't get new trial: top court”, July 30, 2010. Online: <http://www.cbc.ca/news/canada/british-columbia/story/2010/07/30/pickton-supreme030.html>.

¹⁵ *The Highway of Tears Symposium Recommendation Report*, by the Lheidli T’enneh First Nation, Carrier Sekani Family Services, Carrier Sekani Tribal Council, Prince George Nechako Aboriginal Employment and Training Association, the Prince George Native Friendship Center (2006), 9. <http://www.ubcic.bc.ca/files/PDF/highwayoftearsfinal.pdf>

¹⁶ Neal Hall, Vancouver Sun, “Vanishing Point: Women Missing or Murdered”, Five Part Series, December 12 – 17, 2009. Online at: <http://www.vancouversun.com/news/vanished/index3.html>.

¹⁷ *An Act to further Amend the Indian Act, 1880*, SC 1884 c 27 (47 Vict) s 3, outlawed Indigenous social and religious ceremonies, imposing imprisonment for up to 6 months. These prohibitions were not rescinded until the *Indian Act*, RS 1951 c I-5.

¹⁸ The right of Aboriginal people to vote without losing status or treaty rights was first extended to Aboriginal people in 1960 by the *Act to Amend the Canada Elections Act* which received Royal Assent on March 31, 1960 and came into effect on July 1, 1960.

¹⁹ *Indian Act, 1876*, SC 1876, c 18 (39 Vict), s 12 defined a “person” as “an individual other than an Indian.” The *Indian Act*, RS 1951 c I-5 removed the exclusion of ‘Indian’ from the definition of ‘person’.

²⁰ *Indian Act*, RSC 1927, c 9, s 141 prevented “Indians” from hiring lawyers.

²¹ The *Act to further Amend the Indian Act*, S.C.1894 c 32, (57-58 Vict) s 137 permitted the Department of Indian Affairs to forcibly remove Indigenous children from their parents for placement in residential schools. In 2008 Canada acknowledged that many of these children “...were inadequately fed, clothed and housed....some of these

- denied status under the *Indian Act* to Aboriginal women on the basis of marriage to those without *Indian Act* status;²²
 - until 2011, denied the protection of the federal *Human Rights Act*²³ to actions taken under the *Indian Act*.
9. Aboriginal women are among the most impoverished members of Canadian society. Recent statistics²⁴ indicate that:
- 18 per cent of Aboriginal women aged 15 and over are single parents, compared with 8 per cent of non-Aboriginal women, with larger families than single non-Aboriginal women; 44 per cent of women and girls living on reserves live in homes that need major repairs;
 - 31 per cent of Inuit women and girls live in crowded homes, compared to 3 per cent of non-Aboriginal females. In reserve communities, 26 per cent of First Nations women and girls were living in crowded conditions;
 - 35 per cent of Aboriginal women aged 25 and over have not graduated from high school;
 - 9 per cent of Aboriginal women aged 25 and over have a university degree, compared with 20 per cent of their non-Aboriginal counterparts;
 - 13.5 per cent of Aboriginal women were unemployed, compared with a rate of 6.4 per cent for non-Aboriginal women. Among First Nations women, those living on reserve

children died while attending residential schools and others never returned home. The [Canada's] government now recognizes that the consequences of the Indian residential schools policy were profoundly negative and that this policy has had a lasting and damaging impact on aboriginal culture, heritage and language." CBC News/Canada, *Prime Minister Stephen Harper's statement of apology* (11 June 2008). **Online:** <http://www.cbc.ca/news/canada/story/2008/06/11/pm-statement.html>

²² The *Indian Act*, 1869, defined an "Indian" as an Indian man, his wife, and his child. Indian women were deemed to be the adjuncts of men and they were stripped of their Indian status if they married a non-status man. Indian men, who married a non-status woman conferred their Indian status on her and on their children. The *Indian Act*, 1985, repealed the sexist 'marrying out' provision and reinstated to Indian status some Aboriginal women who had lost status because of marrying out. However, the 1985 re-instatees were not given full status and did not have the same ability to confer status on their children and grandchildren as the men and their descendants who never lost status. Also, aside from the marrying-out provision, the *Indian Act* generally preferred male Indians and their descendants over female Indian and their descendants with respect to recognition of status and transmission of it. Canada removed some of this discrimination when it adopted the *Gender Equity in Indian Registration Act*, S.C. 2010, c. 18, known as "the McIvor amendment" because it was the outcome of Sharon McIvor's constitutional sex equality challenge to the status registration provisions in the *Indian Act*. This amendment came into force in January 2011. However, some sex discrimination in the status registration provisions of the *Indian Act* still remains uncorrected. In 2011, Ms. McIvor filed a communication under the First Optional Protocol to the *International Covenant on Civil and Political Rights*. This communication claims that Canada continues to discriminate against Aboriginal women and their descendants and has not yet completely eliminated the sex discrimination from the *Indian Act*. The McIvor communication can found online at: <http://povertyandhumanrights.org/wp-content/uploads/2011/08/McIvorApplicantsPetition1.pdf>

²³ Section 67 of the *Canadian Human Rights Act*, enacted in 1977, provided barred complaints of discrimination being filed against the federal government or Band Councils when they were acting under the *Indian Act*. In 2008, Parliament repealed this section; only in 2011 did the jurisdiction of the Canadian Human Rights Commission extend to issues related to the *Indian Act*.

²⁴ O'Donnell, V. and Wallace, S. (2011). *First Nations, Métis and Inuit Women*, supra, note 7.

experienced the highest unemployment rate (20.6 per cent);²⁵

- There is a higher prevalence of chronic health conditions among Aboriginal women compared to women in the overall population;
- In 2001, the estimated life expectancy at birth for Aboriginal females was 76.8 years, more than five years less than their non-Aboriginal counterparts;
- Aboriginal parents are at greater risk than non-Aboriginal women of having their children removed by authorities under child protection legislation because of “neglect”. In British Columbia “neglect” is defined as “failure to provide for a child's basic needs: food, clothing, adequate shelter, supervision and medical care”.²⁶ The Poverty and Human Rights Centre notes in *The Vicious Circle*, a 2010 report on conditions and social policy affecting poor women in British Columbia, that “neglect” is, almost by definition, poverty.²⁷ Women who leave violent relationships often have to resort to reliance on social assistance, which does not provide them with enough income to support themselves and their children. Children can then be removed because of “neglect”, or because the children have witnessed violence. Aboriginal women are afraid to report violence, and often afraid to leave violent partners because of fear of removal of their children.²⁸

10. Aboriginal people also have unequal access to basic services. As of November 30, 2011, there were 131 First Nations communities across Canada under a Drinking Water Advisory.²⁹ In November 2011, the community of Attawapiskat in Ontario took the extraordinary step of declaring a state of emergency as temperatures dropped while dozens of families were living in makeshift shacks, tents, and other forms of inappropriate housing. In a press release, United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya, decried the “dire social and economic conditions” in Attawapiskat, which, he noted, exemplify the conditions of many Aboriginal communities across the country.³⁰

²⁵ When the labour market downturn began between 2008 and 2009, Labour Force Survey (LFS) data revealed that Aboriginal people experienced sharper declines in employment rates than non-Aboriginal people. According to the LFS, between 2008 and 2009, employment rates fell by 3.2 percentage points among Aboriginal people and 1.9 percentage points among non-Aboriginal people. As a result, the already existing gap between the groups widened. At the same time, the unemployment rate rose more sharply for Aboriginal than non-Aboriginal people: *ibid.*

²⁶ The Ministry of Children and Families’ definition of “neglect” can be found at:

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

²⁷ The Poverty and Human Rights Centre, *The Vicious Circle*, (Vancouver: The Poverty and Human Rights Centre, 2010) at 17.

²⁸ “Voices”, *supra* note 8, at 95.

²⁹ Health Canada, Ottawa. “First Nations, Inuit and Aboriginal Health: Drinking Water and Wastewater.” Online at: http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#how_many. (Date Modified: 2011-11-15) Drinking water advisories are preventive measures to protect public health from waterborne contaminants that could be, or are known to be, present in drinking water. They include boil water advisories and “do not drink” advisories.

³⁰ Canada / Attawapiskat First Nation: Statement by the UN Special Rapporteur on indigenous peoples, 20 December 2011. Online at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11743&LangID=E>.

11. The Special Rapporteur also noted the extreme discrepancy between the conditions faced by First Nations communities and non-Aboriginal communities in Canada, and cited information he received indicating that First Nations communities are systematically underfunded as compared to non-Aboriginal towns and cities. He also noted that the Government has allegedly been resisting efforts by the Canadian Human Rights Commission to inquire into allegations of discrimination on the basis of national or ethnic origin related to disparities in funding provided to First Nations as compared to non-aboriginal communities for child welfare services. He asked the Government to express its views about the accuracy of this information, and requested further details regarding official programs currently in place to address the disparate social and economic conditions of First Nations communities, as compared to non-Aboriginal communities.
12. Despite the fact that many Aboriginal communities are located in remote areas of Canada, where the provision of government services would be typically more expensive, the federal government spends less money per person on many services to reserve communities than the provincial and territorial governments spend in predominately non-Indigenous communities.³¹ In her final report to Parliament, outgoing Auditor General Sheila Fraser highlighted a lack of progress in improving living conditions on reserves, finding unsatisfactory progress on several recommendations contained in previous audits over the past decade that are important for the lives and well-being of First Nations people.³²
13. Progress on ensuring that all reserves have clean, safe drinking water has been unsatisfactory according to the Auditor General's June 2011 report. According to federal government data, more than half of the drinking water systems on reserves continue to pose a risk to the people who use them.³³ The human right to water and sanitation is derived from the right to an adequate standard of living enshrined in a number of human rights treaties to which Canada, as a State Party, is legally obligated, and has been recognized by the United Nations General Assembly as essential for the full enjoyment of life and all human rights.³⁴
14. The Auditor General also identified massive disparities in education between First

³¹ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada*, at 7. Online at:

http://www.amnesty.ca/campaigns/sisters_overview.php

³² Canada. Office of the Auditor General. June 2011 Status Report of the Auditor General of Canada, Chapter 4: Programs for First Nations on Reserves. Online: http://www.oag.bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html.

³³ *Ibid.*

³⁴ See, Office of the High Commissioner for Human Rights, "A landmark decision to make the right to water and sanitation legally binding" 6 October 2010. Online: <http://www.ohchr.org/EN/NewsEvents/Pages/RightToWaterAndSanitation.aspx>. See the resolution, which was adopted with no opposition.

Nations and non-Indigenous Canadians, and charged the Government of Canada with failing to maintain a consistent approach to education on reserves, leading to a lack of progress in closing this education gap. In their Shadow Report to the UN Committee on the Rights of the Child (UNCRC), NGOs point out that First Nations schools receive \$2000-\$3000 less funding per student than provincially run schools, resulting in a two-tiered education system that provides Aboriginal children with a lesser level of service.³⁵ The Government of Canada has failed even to collect reliable data about these funding disparities, in direct contravention of the UNCRC's recommendations to Canada in 2003.³⁶

15. Aboriginal children are grossly overrepresented in the child protection system; Aboriginal children are nearly ten times more likely to be in care than non-Aboriginal children.³⁷ The forcible removal of Aboriginal children from their communities, a hallmark of the era of residential schools, is a continuing reality for Aboriginal communities in Canada.
16. Aboriginal women and girls are also disproportionately criminalized and incarcerated in Canada. The Aboriginal population in Canada is approximately 3.8 percent (in 2006), yet 34 percent of incarcerated women are Aboriginal, and in the last 10 years the number of federally-sentenced Aboriginal women in custody has increased by 86.4 per cent, compared to 25.7 per cent over the same period for Aboriginal men.³⁸
17. These statistics 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, healthcare and other essential services. Canada is failing to live up to its obligations under CERD Article 2(1) 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 racial discrimination.

International Human Rights Law and Canada's Failure to Act

18. The issue of missing and murdered Aboriginal women and girls has attracted attention from international human rights bodies, which have expressed grave concern over the

³⁵ First Nations Child and Family Caring Society of Canada and KAIROS: Canadian Ecumenical Justice Initiatives, "Honouring the Children: Shadow Report on the occasion of Canada's 3rd and 4th Periodic Report to the United Nations Committee on the Rights of the Child" 24 October 2011, at 6. Online: <http://www.kairoscanada.org/wp-content/uploads/2011/10/DR-IR-11-10-HonouringTheChildren.pdf>

³⁶ *Ibid.*

³⁷ Pivot Legal Society, "Broken Promises: Parents speak about BC's child welfare system," October 2008, at 3. Online: <http://www.pivotlegal.org/sites/pivotlegal.org/files/BrokenPromises.pdf>

³⁸ Howard Sapers, "Annual Report of the Office of the Correctional Investigator 2010-2011," Ottawa 2011. Online: <http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20102011-eng.aspx#ss5>.

extreme violence against Aboriginal women and girls in Canada. Treaty bodies have called on Canada to take steps to address the violation of the rights of Aboriginal women and girls to life and security of the person. The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination (CERD/C) and the Committee on the Elimination of Discrimination against Women (CEDAW/C) have, since 2003, identified and made recommendations for the amelioration of 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.³⁹

In the 2009 Universal Periodic Review of Canada, a number of members of the Human Rights Council reiterated these concerns. All of these bodies have stressed the need to fully address the root causes of violence against Aboriginal women.⁴⁰

19. In 2008, after reviewing Canada's compliance with its obligations under CEDAW, the CEDAW/C stated:

the Committee...remains concerned that hundreds of cases involving Aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished.

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.⁴¹

³⁹See *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/CAN/CO/5 (20 April 2006), at para. 23; *Concluding observations of the Committee on Racial Discrimination: Canada*, UN Doc. CERD/C/CAN/CO/18 (25 May 2007), at paras. 20-21 and *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, UN Doc. CEDAW/C/CAN/CO/7 (7 November 2008), at paras. 21-22, 31-32, and 43-46.

⁴⁰ *Report of the Working Group on the Universal Periodic Review Canada*, A/HRC/11/17, adopted by the Human Rights Council A/HRC/11/37 at para. 11/103, Outcome of the universal periodic review: Canada. Online at: <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CCASession4.aspx>.

⁴¹ *Concluding observations of the Committee on the Elimination of Discrimination against Women*, (7 November 2008), *supra* note 39, at paras. 31-32.

20. A request by CEDAW/C in 2008⁴² that Canada report back on this issue within one year underscored the urgency for immediate action. Canada's responses to CEDAW/C were met with a request for further follow-up. The Committee wrote:

The Committee reiterates its grave concern with respect to the situation of missing and murdered Aboriginal women, the failure of the police to protect these women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered, and the lack of punishment of perpetrators. The Committee considers that its recommendation [regarding missing and murdered Aboriginal women and girls] has not been implemented and it requests the Canadian authorities to urgently provide further information on measures undertaken to address such concerns"⁴³

21. Numerous NGOs submitted reports to CEDAW/C, both in the lead-up to Canada's review and following on the Committee's request for follow-up. For example, the BC CEDAW Group's 2008 Submission to the CEDAW/C on the occasion of the Committee's review of Canada's 6th and 7th Reports, entitled "Inaction and Noncompliance: British Columbia's Approach to Women's Inequality" highlighted the particular risk of violence faced by Aboriginal women and the disproportionate impact of inadequate police protection, charging policies and lack of victim support services on Aboriginal women and girls.⁴⁴ The BC CEDAW Group called for the government to develop a plan to address structural violence against Aboriginal women and girls, including through the investment of more resources and infrastructure to address systemic forms of discrimination. Numerous other NGOs and coalitions made submissions to the CEDAW/C after its request for follow-up indicating that no effective steps had been taken by Canada.⁴⁵
22. Amnesty International reported, in 2009, that measures to end discrimination and violence against Indigenous women "have been piecemeal at best" and that

⁴² *Ibid.* at para. 53.

⁴³ United Nations High Commissioner for Human Rights, Letter from Dubravka Simonovic, Rapporteur on follow-up, Committee on the Elimination of Discrimination against Women, to H.E. Mr. Marius Grinius, Permanent Representative of Canada, 25 August 2010. Online:

<http://www2.ohchr.org/english/bodies/cedaw/docs/followup/Canada.pdf>

⁴⁴ BC-CEDAW Group, "Inaction and Noncompliance: 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 on the occasion of the Committee's review of Canada's 6th & 7th Reports, September 2008, online: http://www.westcoastleaf.org/userfiles/file/CEDAW_Aug06_v7.pdf

⁴⁵ See Canadian Feminist Alliance for International Action, *No Action: No Progress - Report on Canada's Progress in Implementing Priority Recommendations by the United Nations Committee on the Elimination of Discrimination against Women in 2008*, February 2010; BC-CEDAW Group, *Nothing to Report – A Report on Progress in Implementing Priority Recommendations made by the Committee in its 2008 Concluding Observations on Canada*, January 2010; and Amnesty International, *Canada: Follow-up to the Concluding Observations of the United Nations Committee on the Elimination of Discrimination against Women, 2009*. All online at: <http://www2.ohchr.org/english/bodies/cedaw/followup.htm>.

The scale and severity of the human rights violations faced by Indigenous women require a co-ordinated and comprehensive national response that addresses the social and economic factors that place Indigenous women at heightened risk of violence. Such a response needs to address the police response to violence against Indigenous women; the dramatic gap in standard of living and quality of life which increases the risks to Indigenous women; the continued disruption of Indigenous societies by the high proportion of children put into state care; and the disproportionate rate of imprisonment of Indigenous women.⁴⁶ (emphasis added)

23. Canada's lack of political will to seriously address this ongoing tragedy is demonstrated by the inadequacy of the December 2011 Report of the Parliamentary Standing Committee on the Status of Women on violence against Aboriginal women and girls.⁴⁷ The report has been criticized for failing to offer any real solutions, failing to consider the expertise of Aboriginal women's groups, and failing to address poverty as a root cause of violence against Aboriginal women.⁴⁸
24. In January 2011 and in September 2011, NWAC and the Canadian Feminist Alliance for International Action (FAFIA) made a formal request to the CEDAW/C to initiate an Inquiry under Article 8 of the Convention's Optional Protocol.⁴⁹
25. In December 2011, the CEDAW/C issued a press release stating that it has initiated an inquiry procedure under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, regarding the disappearances and murders of Aboriginal women and girls.⁵⁰

⁴⁶ *No More Stolen Sisters*, *supra* note 31, at 4.

⁴⁷ Standing Committee on the Status of Women, Irene Mathyssen, MP, Chair, *Ending Violence Against Aboriginal Women and Girls: Empowerment – A New Beginning*, December 2011. Online at: [http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5322860&Language=E&Mode=1&Parl=41&Ses=](http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5322860&Language=E&Mode=1&Parl=41&Ses=1)

[1](#).

⁴⁸ "Report on violence excludes voices of aboriginal women: NDP." CTV news, December 12, 2011. Online at: <http://www.ctv.ca/CTVNews/Canada/20111213/commons-violence-report-excludes-aboriginal-women-voices-new-democrats-111213/#ixzz1h0tkxMdN>.

<http://www.ctv.ca/CTVNews/Canada/20111213/commons-violence-report-excludes-aboriginal-women-voices-new-democrats-111213/>

⁴⁹ See NWAC and FAFIA Backgrounder, "Inquiry under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women," online: <http://www.cdp-hrc.uottawa.ca/uploads/Elimination%20discrimination%20women%20Press%20Release.pdf>

⁵⁰ Press Release by the Committee on the Elimination of Discrimination against Women concerning the inquiry regarding disappearances and murders of aboriginal women and girls in Canada, 16 December 2011. Online at: http://www2.ohchr.org/english/bodies/cedaw/docs/CanadaInquiry_Press_Release.pdf

26. Aboriginal women and girls in Canada need the assistance of CERD/C, and all relevant United Nations mechanisms.
27. Despite the efforts of Aboriginal, women's and community groups and despite the many recommendations from international human rights treaty bodies and the Human Rights Council, Canada continues to fail in its obligations to protect Aboriginal women and girls from discrimination and the threat of violence.
28. Article 2(1) of CERD obliges States Parties to "undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms." To this end, Article 2(1)(c) obliges States Parties to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists." It is our submission that Canada is in violation of this and other international human rights obligations with respect to Aboriginal women and girls in Canada.

Establishment of the Missing Women Commission of Inquiry

29. On September 27, 2010, the Government of British Columbia established a Missing Women Commission of Inquiry (referred to as "the Commission" or MWCI) to inquire into and make findings of fact regarding the conduct of police investigations between January 23, 1997 and February 5, 2002, respecting dozens of women reported missing from the Downtown Eastside of Vancouver, and the decision of the Criminal Justice Branch in January 1998 to enter a stay of proceedings on attempted murder and other charges against Robert Pickton, who was convicted for the murder of six of the disappeared women.⁵¹ Included, but marginalized within the scope of the inquiry, is a brief study of the Highway of Tears disappearances and murders and the police investigations of them in north/central British Columbia. No evidentiary hearings will be held on the Highway of Tears disappearances and murders; consequently no findings of fact can be made. The Commission was asked to recommend changes to the initiation and conduct of investigations of missing women in British Columbia and suspected multiple homicides. The British Columbia government appointed Mr. Wally Oppal to head the Commission. There were immediate concerns about Mr. Oppal's appointment since, as Attorney General of British Columbia from 2005 to 2009, he had authorized the stay of proceedings of twenty murder charges against Robert Pickton.⁵²

⁵¹ Missing Women Commission of Inquiry, Terms of Reference, para. 4. Online at: <http://www.missingwomeninquiry.ca/terms-of-reference/>.

⁵² Justine Hunter, "Decision not to try Pickton on 20 more charges outrages families." Globe and Mail, February 27, 2008, online at: <http://www.theglobeandmail.com/news/national/decision-not-to-try-pickton-on-20-more-charges-outrages-families/article669886/>.

30. The Commission began its hearings on October 11, 2011 and is to produce a report of its findings by June 30, 2012.⁵³
31. Despite criticism of the Commission's temporal and geographical limitations and for the appointment of a former Attorney General as its Commissioner, many non-governmental organizations, including members of the B.C. CEDAW Group, hoped that the Inquiry would be a useful process for examining the race, sex and class discrimination inherent in the police and justice system failures surrounding the Pickton investigations.⁵⁴ To that end, a number of women's, Aboriginal and Downtown Eastside community organizations applied for standing to participate in the Inquiry.
32. The Commissioner granted standing to many of the organizations who applied to participate in the Inquiry, and recommended that funding be provided on the basis of each group's level of involvement. The Commissioner ruled that without funding these groups would not be able to meaningfully participate.⁵⁵
33. On May 19, 2011, the Attorney General of British Columbia refused to fund the groups granted standing, committing only to fund one lawyer to represent the families of the victims of Robert Pickton.
34. Commissioner Oppal expressed his concern about the denial of funding in his June 20, 2011 Status Report:

I am concerned about the effect of the Attorney General's funding decision on the Commission. The Commission is dedicated to ensuring that it is thorough and fair and that all perspectives, identified as unique, necessary and valuable in the Ruling on Participation and Funding Recommendation, are adequately represented. The Commission believes this is necessary to ensure it fulfills its mandate under the Terms of Reference.⁵⁶
35. The Commissioner also sent a letter to the Attorney General, stating that "It would be the height of unfairness to require unrepresented individuals to cross-examine police who are represented by highly qualified counsel."⁵⁷ British Columbia confirmed the decision to deny funding in a letter to Commissioner Oppal, dated July 22, 2011.⁵⁸

⁵³ The original deadline of December 31, 2011 was extended on October 12, 2011.

⁵⁴ West Coast Leaf, "CEDAW 2011 Report Card: How BC is Measuring in Women's Rights", at 6. Online at: <http://www.westcoastleaf.org/index.php?pageID=23&parentid=22>.

⁵⁵ Missing Women Commission of Inquiry, Ruling on Participation and Funding Recommendations, May 22, 2011, at 24. Online at: <http://www.missingwomeninquiry.ca/rulings/>

⁵⁶ Missing Women Commission of Inquiry, Status Report #2 on Commission Progress, June 20, 2011. Online at: <http://www.missingwomeninquiry.ca/reports-and-publications/>.

⁵⁷ Commissioner Wally Oppal, Letter to the Honourable Barry Penner, Attorney General of British Columbia, June 30, 2011.

⁵⁸ David Loukidelis, A.C., Deputy Attorney General, Letter to The Honourable Wally T. Oppal, July 22, 2011. Online at: http://www.cfne.org/modules/news/article.php?com_mode=flat&com_order=1&storyid=7910.

36. None of the groups denied funding has the resources to retain legal counsel on their own. On the other hand, 19 lawyers are representing police and justice system officials, all paid for by public funds.⁵⁹
37. In an apparent effort to salvage the Commission, but without consulting with the groups granted standing participant groups, the Commissioner appointed two “independent” counsel to work independently of the Commission with a mandate “to help ensure that the perspectives of Vancouver’s Downtown East Side community and Aboriginal women are presented at the inquiry,” and to serve the public interest at the hearings.⁶⁰ However, the groups, whose perspectives these lawyers are supposed to present to the Commission, have no control over them and cannot instruct them.
38. An additional request for funding⁶¹ made jointly by the unfunded groups to British Columbia Premier Christy Clark was refused.⁶² As a result of the government’s decision to deny funding to the participants, 18 groups granted standing withdrew from participation in the Inquiry.⁶³
39. Denying funding to groups already granted standing at an inquiry is unprecedented in Canada. A group of eminent jurists stated in a letter to the Attorney General:

Standing and funding cannot be separated from each other, because funding is what gives reality to standing...We can identify 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

⁵⁹ Angela Sterritt, *The Dominion*, “Missing Women’s Commission Flounders”, September 26, 2011. Online at: <http://www.dominionpaper.ca/articles/4182>.

⁶⁰ Missing Women Commission of Inquiry, “Missing Women Commission Appoints Two Independent Lawyers; Two Others to Participate Pro Bono,” August 10, 2011. Online at: <http://www.missingwomeninquiry.ca/2011/08/august-10-2011-missing-women-commission-appoints-two-independent-lawyers-two-others-to-participate-pro-bono/>.

⁶¹ Assembly of First Nations and other groups, Joint Letter to Premier Christy Clark, September 28, 2011. Online at: http://www.ubcic.bc.ca/files/PDF/110928_LettertoPremier_MWCI.pdf.

⁶² Grace Scott, *The Tyee*, “Clark rejects request to ‘fix’ Missing Women Inquiry”, September 28, 2011. Online at: <http://thetyee.ca/Blogs/TheHook/Rights-Justice/2011/09/28/clark-rejects-request-to-fix-inquiry/>.

⁶³ This list includes: Amnesty International; British Columbia Civil Liberties Association; Pivot Legal Services Society; Frank Paul Society; Women’ Memorial March Committee; BC Indian Chiefs; Carrier Sekani Tribal Council; Native Courtworkers and Counseling Society; Downtown Eastside Women’s Centre; Assembly of First Nations; A coalition of sex-trade workers that includes the WISH Drop-in Centre Society, the PACE (Providing Alternatives, Counseling & Education) Society and the SWUAV (Sex Workers United Against Violence) Society; A coalition including West Coast LEAF and Ending Violence Association of BC.; Women’s Equality and Security Coalition (WESC) composed of the National Congress of Black Women Foundation; Aboriginal Women’s Action Network; Coalition of Childcare Advocates; Justice for Girls; Canadian Association of Sexual Assault Centers; EVE (formerly Exploited Voices now Educating); Vancouver Rape Relief Society; University Women’s Club of Vancouver; The Poverty & Human Rights Centre; The Asian Women Coalition Ending Prostitution; and the Provincial Council of Women.

for participation. It is illogical, and it damages irreparably the ability of the Commissioner to do the very work that was assigned to him.⁶⁴

40. As the lawyers' letter stresses, the refusal of funding in this case is "especially egregious" because

the groups granted standing represent some of the most disadvantaged women in Canada, including Aboriginal women, women living in poverty, women with drug addictions, and women engaged in prostitution. These are women whose voices are rarely heard in legal fora. They are women who are regularly, and in the facts at issue in the Inquiry, repeatedly preyed upon, violated and murdered. To render them voiceless when it is their lives and safety which are the subject of the Inquiry, is unprincipled, as well as legally unsound."⁶⁵

41. In September 2011, after the government decided to deny funding to Aboriginal and women's groups seeking to participate in the MWCI, the Native Women's Association of Canada (NWAC), which had been granted full standing, submitted a formal request to the United Nations Special Rapporteur on Violence Against Women, the Special Rapporteur on the Rights of Indigenous Peoples, and the Special Rapporteur on the Independence of Judges and Lawyers, calling on the three Special Rapporteurs to make an urgent joint appeal to Canada to address the discriminatory denial of funding for legal counsel at the MWCI. In its request NWAC claimed that the denial of funding for legal counsel 1) constituted inequality in treatment of state officials and defenders of victims of violence; 2) treated groups granted standing at the Missing Women Commission of Inquiry differently than groups granted standing at all other inquiries in Canada; 3) created further discrimination through the appointment of "independent counsel"; and 4) denied NWAC both the right to participate and the right to access to justice.⁶⁶

Violation of Rights of Aboriginal Women and Girls to Equality and Security of the Person

42. Aboriginal women and girls in Canada face gender and race-based discrimination and inequality. Canada has failed to address the socio-economic conditions which make Aboriginal women and girls particularly vulnerable and has also failed to respond adequately to incidents of violence, and to the crisis of missing and murdered Aboriginal

⁶⁴ Professor Kent Roach and Co-signers, Letter to the Honourable Shirley Bond, September 7, 2011, at 2. Online: <http://www.nwac.ca/media/release/09-09-11-0>.

⁶⁵ *Ibid.* at 2-3.

⁶⁶ Urgent Appeal by the Native Women's Association of Canada, online at: <http://www.nwac.ca/sites/default/files/download/yzhou/NWAC%20Request%20to%20UN%20Special%20Rapporteurs%20for%20Urgent%20Joint%20Appeal%20to%20Canada.pdf>

women and girls. These failures violate both Canada's domestic law and its international obligations to ensure the *jus cogens* right to equality and non-discrimination.

43. The principle of equality and non-discrimination is a peremptory norm from which no derogation is permitted. The primacy of equality rights in Canada is confirmed in the Preamble to the *Constitution Act, 1982*,⁶⁷ and by the Canadian *Charter of Rights and Freedoms* (Charter), section 15⁶⁸ and through the recognition and affirmation of "existing aboriginal and treaty rights", under section 35.⁶⁹
44. The fundamental character of the right to equality is reflected by its inclusion in many other human rights instruments to which Canada is a party or an adherent. These include the *Charter of the United Nations* (article 8); the *Universal Declaration of Human Rights* (article 2); the *International Covenant on Civil and Political Rights* (Preamble, article 2), the *Convention on the Elimination of all Forms of Racial Discrimination* (Preamble, Articles 1&2) and the *United Nations Declaration on the Rights of Indigenous Peoples - UNDRIP* (Preamble, Articles 2, 21, 24, & 28).
45. Under Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), Canada is required to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of
 - (a) The right to equal treatment before the tribunals and all other organs administering justice;
 - (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
 - (c) ... equal access to public service...
 - (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration...
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training...
46. CERD obliges Canada to take, "when the circumstances so warrant", special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals, for the purpose of guaranteeing full and equal enjoyment of

⁶⁷ *Constitution Act, 1982*, being Schedule B to the [Canada Act 1982 \(UK\), 1982, c 11](#), (see Preamble): Appendix A, No 9.

⁶⁸ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11, s 15*: Appendix A, No 10.

⁶⁹ *Constitution Act, 1982*, *supra* note 63, s 35: Appendix A, No 11.

human rights and fundamental freedoms (Article 2); to assure effective protection and remedies (Article 6); and to adopt immediate and effective measures, with a view to combating prejudices, which lead to racial discrimination (Article 7).

47. By endorsing the *Declaration on the Rights of Indigenous Peoples*, the provisions of which are all relevant to the elimination of discrimination and the prevention of violence against Aboriginal women, Canada has agreed that all States, including Canada, should:

...take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society. [Article 15(2)]

...take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions...[Article 21(2)]

...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. [Article 22(2)]

48. Specific steps or measures that must be taken to effectively ensure the equal and non-discriminatory exercise of protected rights (due diligence) are explicitly stated in the *Declaration on the Elimination of Violence against Women*, at Article 4:

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should...

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

49. The CEDAW/C commented on this “due diligence” requirement in relation to violence against women:

It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law

and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.⁷⁰ (emphasis added)

Failure to exercise due diligence

50. Amnesty International reports that Canadian police and public officials have long been aware of a pattern of racist violence against Aboriginal women and girls but have done little to prevent it.⁷¹ A 2005 Justice for Girls Report concluded that Aboriginal girls are more vulnerable to being targeted by violent men because of inadequate response by police and courts.⁷²
51. NWAC reports that families, communities, and friends of missing Aboriginal women and girls have experienced “a lack of responsiveness, disrespect, confusing or incorrect information, poor adherence to policies and protocols, and an overall discounting of family information.”⁷³
52. A 408-page report entitled “Missing Women Investigation Review” released by the Vancouver Police Department (VPD) on August 20, 2010 details eight key reasons for the failed investigation of missing women and murdered women from Vancouver’s Downtown Eastside, including a lack of resources, poor continuity of staffing, multi-jurisdictional challenges, a lack of training, and a lack of leadership.⁷⁴ The review emphasizes that, “notwithstanding the many deficiencies in the investigation, the VPD did not cause the failure of the investigation into Pickton because the Royal Canadian Mounted Police (RCMP), a separate police force, had responsibility for that investigation.”⁷⁵ According to the review, the RCMP asserted authority over the investigation in 1999 and then abandoned it.
53. In a case before the Inter-American Commission on Human Rights involving violence against women and issues of inter-jurisdictional policing in the United States, the Commission found that the State Party had failed to act with due diligence to protect the claimant and her family from violence, which violated that State’s obligation not to

⁷⁰ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (11th session, 1992), at para. 9. Online at:

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

⁷¹ *Stolen Sisters*, *supra* note 6, at 1.

⁷² Kelly A. MacDonald, Justice for Girls, *Justice System’s Response: Violence against Aboriginal Girls*, submitted to: Honourable Wally Oppal, Attorney General of British Columbia, September 2005, at 8. Online at:

<http://justiceforgirls.org/publications/pdfs/>

⁷³ *Voices*, *supra* note 8, at 96.

⁷⁴ Vancouver Police Department. *Missing Women Investigation Review* (August 2010). Online at:

http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf

⁷⁵ *Ibid.* at 19.

discriminate and to provide for equal protection before the law under the American Declaration on the Rights and Duties of Man.⁷⁶ The Commission recommended the design and implementation of protocols at the federal and state levels specifying the proper components of investigations by law enforcement officials, highlighting the necessity of police communication and coordination with respect to issues of violence against women.

54. A resolution passed at the 2006 annual meeting of the Canadian Association of Chiefs of Police acknowledged the high levels of violence experienced by Indigenous women. The resolution also called on all police services to adopt missing persons policies that include specific measures to address the circumstances and needs of indigenous people.⁷⁷ However, few police forces have concrete guidelines to help officers evaluate the risks to missing persons and what kind of investigation is required.⁷⁸ The problem is compounded, according to Amnesty International, “by the continued failure to acknowledge the distinct risks faced by Indigenous women in Canadian society.”⁷⁹
55. Despite the known prevalence of violence against Aboriginal women and girls, there is still no national database of information on missing and murdered women that identifies them by Aboriginal status. A national database to be established by the RCMP has been delayed until 2013.⁸⁰ However, when it is complete, the database will not be solely dedicated to missing and murdered native women but is instead designed to be a missing persons’ database. It may not even collect information that identifies victims by their aboriginal identity.⁸¹
56. In addition, at this time, there is no established pan-Canadian or intra-provincial co-ordination among police forces. There are also no standard police protocols for dealing with missing and murdered Aboriginal women and girls, and no mandatory comprehensive training for all police personnel on this issue.⁸² Apart from some task forces⁸³, which are dealing with cold files, reviewing individual incidents, and looking for possible links, there is no systemic response to the issue of missing and murdered Aboriginal women – either in the provinces or nationally.

⁷⁶ Jessica Lenahan (Gonzales) et al. v. United States, Report No. 80/11, Case 12.626 (Merits), 21 July 2011.

⁷⁷ *No More Stolen Sisters*, *supra* note 26, at 21.

⁷⁸ *Ibid.* at 22

⁷⁹ *Ibid.*

⁸⁰ Thestar.com, “RCMP database for missing persons delayed until 2013”, Mar 01 2011. Online at: <http://www.thestar.com/news/canada/article/946924--rcmp-database-for-missing-persons-delayed-until-2013>.

⁸¹ *Ibid.*

⁸² *No More Stolen Sisters*, *supra* note 31, at 22-33; see also *Voices*, *supra* note 8, at 101-102.

⁸³ In 2003, the RCMP established Project KARE with the Edmonton Police Service to examine the deaths of several “High Risk Missing Persons” found in the surrounding rural areas of the City of Edmonton. The RCMP and Winnipeg Police Service have established Project Devote, a two-pronged approach to address unsolved historical homicides and missing person cases, where foul play is suspected, involving exploited and at risk persons: RCMP, *Missing and Murdered Aboriginal Persons*, webpage at <http://www.rcmp-grc.gc.ca/aboriginal-autochtone/mmaw-fada-eng.htm>

Denial of Equal Access to Justice, the Right to Participate and the Right to a Remedy

57. The Missing Women's Commission of Inquiry is engaged in reviewing police and government failures to investigate and prosecute some of the disappearances and murders of Aboriginal women and girls in British Columbia. At the core of this inquiry are the fundamental rights of Aboriginal women and girls and the obligations on Canada to respect, protect and fulfill those rights:
- The state's duty to protect the right to life (a prior condition for realization of all other rights) is fundamental.
 - Equality rights—the right to equality before the law, the equal protection of the law and equal access to remedies for violations of rights—are the keystone of the rule of law.
 - The right to a remedy for violation of the right to life, which includes the right to an effective investigation of the cause of death and the identification, trial and punishments of perpetrators of criminal violations of the right to life.
58. The duty to investigate is considered an inseparable part of a state's duty to protect the right to life. The failure to investigate can itself be considered a violation of the right to life. In addition, where—as in this case—there is a pattern of to the rights violations, the failure to conduct effective investigations creates an environment of impunity, which promotes further human rights violations.
59. The United Nations has identified promotion of the right to full and effective participation of Indigenous peoples in decision-making on the full spectrum of matters that affect their lives as one of the cornerstones of its programme of work on Indigenous Peoples.⁸⁴ Under Article 18 of the *United Nations Declaration on the Rights of Indigenous Peoples*, Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, “through representatives chosen by themselves in accordance with their own procedures...”
60. The denial of funding for legal counsel for groups granted standing at the MWCI excludes Aboriginal women's voices from the Inquiry process, further marginalizing the very voices and perspectives the Inquiry was created to address.
61. The denial of funding to community groups discriminates on the basis of race by:
- placing the organizations representing the interests of Aboriginal women and girls on an unequal footing with the state agents, whose conduct is being examined,

⁸⁴ See Report of the Expert Mechanism on the Rights of Indigenous Peoples, “Progress report of the study of indigenous peoples and the right to participate in decision-making” Third Session, 12-16 July 2010. Online: <http://www.indigenousbar.ca/pdf/Report%20on%20Rts%20of%20Indigenous%20Peoples%20Decision%20Making.pdf?p=1>.

- discriminating against these groups because of the subject matter, which is the safety and human rights of women, and in particular, Aboriginal women and girls,
- appointing counsel to “represent the interests” of Aboriginal women, without their consent, control or right to instruct and without enjoying solicitor client privilege,
- denying Aboriginal women the right to participate fully in the Inquiry, and
- denying Aboriginal women the right to an effective remedy.⁸⁵

62. The courts in Canada have recognized that fairness in a proceeding may require equality in representation. In *Jones v. Canada (Royal Canada Mounted Police Complaints Commission)*,⁸⁶ the Federal Court of Canada held that a public commission has discretion to make a recommendation that funding be provided to participants even though the constituent statute does not explicitly provide such authority. In that case, a group of university students initiated civil proceedings against the RCMP for alleged improper conduct in relation to their response to a demonstration in opposition to the Asia Pacific Economic Co-operation (APEC) Conference. Mr. Justice Reed found that “There is considerable support for the proposition...that without state funded legal representation, the complainants/applicants will be at a great disadvantage – there will not be a level playing field.”⁸⁷

63. Canada’s Military Police Complaints Commission recently applied the ruling in *Jones*,⁸⁸ ruling that the “full and ample opportunity” to participate in a hearing, to which the complainants are entitled under the *National Defence Act*, could only be achieved through legal representation. The Commission therefore issued a recommendation that the Government of Canada grant funding for the complainants’ legal representation. The Commission ruled that

The apparent unfairness that would result from a situation where one party is represented by highly qualified counsel at public expense and the other party, despite having expressed the desire to be represented, is left without legal representation because of lack of public funding, would negatively impact on the hearing process and on public confidence in this Commission’s independent oversight role.⁸⁹

64. The appointment of “independent” counsel by the MWCI does not address the unfairness and impairment of opportunity to participate and, in fact, introduces a new form of discrimination. Not only have Aboriginal women had their voices silenced through a lack of funding for legal counsel, they have been given someone to speak for them, but without any mechanism to ensure their voices are adequately represented.

⁸⁵ See NWAC Urgent Appeal, *supra* note 66.

⁸⁶ [1998] 4 F.C. D-55 (July 20, 1998).

⁸⁷ *Ibid.* at para. 7.

⁸⁸ Military Police Complaints Commission, Decision – MPCC-2011-004-October 26, 2011. Online at: <http://www.mpcc-cppm.gc.ca/300/303/2011-004e-eng.aspx>.

⁸⁹ *Ibid.*

65. Counsel representing the police and government officials will act vigorously to defend their respective clients, including through cross-examining witnesses and calling evidence. Denial of legal funding for groups representing the interests of missing and murdered women 'negatively impacts on the hearing process and on public confidence' and ensures that the voices of Aboriginal women will not be heard.
66. Canada has a duty to ensure enjoyment of the right to life (and other protected rights) by conducting effective investigations of alleged violations—in this cases, disappearances and murders, arising from both the ICCPR and the *American Declaration on the Rights and Duties of Man*.
67. By staying the murder charges in relation to 20 of the murdered women British Columbia and Canada have contravened the fundamental duty to protect the right to life by conducting an effective investigation and thereby denied victims' right to a remedy. By hampering the Inquiry through failing to fund lawyers for the groups granted standing, Canada and British Columbia have further denied victims, their families and the public, the right to know the truth as to what happened and the contributing circumstances.
68. The UN Human Rights Committee has confirmed that the ICCPR imposes twin duties; namely, the right to a remedy (guaranteed by Article 2) imposes a positive obligation on states to investigate violations of rights protected by the ICCPR, and therefore a state's failure to investigate may in itself constitute a violation of the ICCPR:

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁹⁰

69. The Inter-American Court of Human Rights (IACtHR) has also unequivocally confirmed on many occasions the duty of states to investigate as part of the over-arching duty to

⁹⁰ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

ensure the enjoyment of the right to life and other rights.⁹¹ For example, in *Velasquez Rodriguez*⁹², a case involving disappearances, the IACtHR ruled:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.⁹³

70. In addition to the specific violation of rights described above, the effect of denial of funding for groups granted standing to participate in the MWCI jeopardizes the ability of the Commission to address systemic issues of violence and discrimination against Aboriginal women in Canada, and to thereby prevent further violence and failures to protect the rights of Aboriginal women. NWAC states, for example, that

Without NWAC's presence, expertise with regard to systemic discrimination against Aboriginal women and girls is lost...It will not be possible for the Commission to engage in a balanced fact-finding process without a specific focus on systemic discrimination against Aboriginal women, including the racialized and sexualized violence that Aboriginal women experience. NWAC has spent years documenting this violence and discrimination. Without a proper factual foundation, the Commission will not be able to make informed recommendations to stop the violence against Aboriginal women and girls.⁹⁴

71. By funding lawyers for the VPD, RCMP and Criminal Justice Branch while refusing legal funding for the human rights organizations and groups advocating for victims, witnesses and other poor and disadvantaged women at risk, British Columbia is continuing the very practices of discrimination and inequality being investigated by the Commission and is effectively silencing the voices of the people from whom the Commission must hear. As NWAC argues, "The effect of this is to privilege the information, perspectives and expertise of the state officials over that of disadvantaged women, whose experience and vulnerability is conditioned by their sex, Aboriginality, and poverty."⁹⁵

⁹¹ The American Convention on Human Rights, Article 1(1). The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 4(1) Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

⁹² I/A Court H.R., *Case of Velasquez Rodriguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4.

⁹³ *Ibid.* at para. 176.

⁹⁴ *Urgent Appeal*, *supra* note 66, at 8.

⁹⁵ *Ibid.* at 8.

72. In continuing its work in the absence of the participation of the groups granted standing, the Commission is effectively acceding to the government's discriminatory treatment of these groups. In a submission to the Commissioner, the Women's Equality and Security Coalition (WESC) writes that

This Commission was appointed to address a tragic underlying problem, namely, a lack of care and respect for the lives and experiences of women, and in particular, Aboriginal women, poor women, and women in prostitution. The Commission cannot make a contribution to correcting this problem, if, in its own processes and in its public stance, it accepts discrimination against these women and puts them, one more time, at an unfair disadvantage.⁹⁶ (emphasis added)

73. While the MWCI is limited to an investigation of disappearances of women from Vancouver's Downtown Eastside, it is the first and, so far only, independent commission in Canada with a mandate to make recommendations relevant to the urgent issue of violence against Indigenous and marginalized women. The denial of funding and de facto exclusion of Aboriginal women and their organizations perpetuates the deeply entrenched race and sex discrimination against Aboriginal women and girls which is the cause of the violence.

Recommendations

Lawyers' Rights Watch and the B.C. CEDAW Group recommend:

- a. That Canada urgently hold a nation-wide inquiry on missing women and girls;
- b. That Canada urgently develop a national action plan for addressing the crisis of violence against Aboriginal women and girls, in partnership with NWAC and other Aboriginal women's organizations;
- c. That Canada design and implement 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 responding quickly and effectively to cases that arise;
- d. That Canada cooperate with civil society groups endeavouring to end violence against Aboriginal women and girls in Canada, and ensure that Aboriginal

⁹⁶ Women's Equality and Security Coalition, Letter to Commissioner Wally Oppal, Q.C., October 7, 2011. Online at: <http://www.educatingvoices.ca/prostitution-news.html>.

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;

- e. That Canada 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;
- f. That Canada 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, punitive child welfare policies, and overcriminalization, as recommended by the CEDAW Committee in 2008;
- g. That Canada co-operate with the CEDAW Committee's inquiry under Article 8 of the Optional Protocol to CEDAW, and invite the Committee to visit Canada, as a part of its inquiry.