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Violence Against Women and Due Diligence: Applying the Inter-American Court of Human Rights' Cotton Field Framework to the Case of Missing and Murdered Indigenous Women in Canada

„We're talking about so many layers of violence, so many generations of loss, and it's all covered up in layers of silence....In order for us to move ahead, we have to deal with all the things people don't want to talk about. We need to learn from the lives that have been lost. We need to turn things around.”¹

I. INTRODUCTION

For decades now, there have been accounts of missing and murdered Indigenous² women and girls in the Western provinces of Canada.³ The numbers themselves – well in the hundreds – are telling, and signal a serious, systemic problem that has largely gone unaddressed, or not adequately addressed, by Canadian federal and provincial law enforcement authorities, despite repeated calls for action by nongovernmental organizations and international treaty bodies.⁴

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¹ Jacobs, Beverley (President of the Native Women's Association of Canada (NWAC)), 2009. augusztus (quoted in Amnesty International): No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada. 2009. március. (hereinafter No More Stolen Sisters). NWAC was created as a nonprofit organization in 1974, comprising 13 native women's organization across Canada. NWAC: Missing or Murdered Aboriginal Women and Girls in British Columbia. Canada, Briefing Paper for Thematic Hearing before the Inter-American Commission on Human Rights, 144th Period of Sessions, 2012. március 28, p. 2.

² Amnesty International defines indigenous as “all defendants of the original inhabitants of the territories that now make up Canada”. This definition includes the First Nations, the Métis, and the Inuit. Amnesty International: Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada. 2004. február. (hereinafter Stolen Sisters).

³ *Id.*

⁴ Lawyers' Rights Watch Canada & the B.C. CEDAW Group: Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada, pp. 11-12., Submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its review of Canada's 19th and 20th Report, 2012. január (hereinafter Missing or Murdered Aboriginal Women and Girls).

Recently, the Inter-American Commission on Human Rights has held a hearing on the murders and disappearances of Indigenous women in Canada,⁵ and the Commission has been invited to visit Canada to investigate the issue. In 2011, at the request of The Canadian Feminist Alliance for International Action (FAFIA),⁶ the CEDAW Committee decided to initiate an inquiry into the disappearances and murders of Indigenous women under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.⁷ Other treaty bodies have also expressed concern over the situation. In 2011, the Human Rights Council in its Universal Periodic Review of Canada addressed the issue of violence against Indigenous women.⁸ The Committee on Economic, Social and Cultural Rights also registered concern with regards to the situation of Indigenous women in 2006.⁹ In 2007, the Committee on the Elimination of Racial Discrimination expressed concern about “serious acts of violence against Aboriginal women, who constitute a disproportionate number of victims of violent death, rape and domestic violence.”¹⁰

The objective of this paper is to introduce the facts and background regarding the murders and disappearances of Indigenous women and girls in Canada; to identify Canada’s obligations under relevant human rights treaties – both at the global and regional level – with regards to this situation, with specific attention paid to the jurisprudence of the Inter-American Court of Human Rights and the Inter-American Commission; and to propose solutions.

II. MISSING AND MURDERED INDIGENOUS WOMEN IN CANADA

II.1. FACTUAL BACKGROUND

One of the primary obstacles of bringing the issue of murdered and disappeared Indigenous women into the forefront of attention – both nationally and internationally – has been the lack of reliable data regarding the incidents and the victims. This lack of information is also characteristic of the pervasive discrimination and general climate of indifference that is all too often the everyday reality of Indigenous women in Canada. Although both Statistics Canada and the General Social Survey have reported high rates of violence and sexual abuse with

⁵ Inter-American Commission on Human Rights, 144th Period of Sessions, 2012. március 28.

⁶ Request for onsite visit, NWAC & FAFIA, 8 February 2012, <http://fafia-afai.org/wp-content/uploads/2011/06/NWAC-and-FAFIA-FEB-8-2012-FINAL-3.pdf> (accessed November 22, 2012).

⁷ See <http://opcedaw.wordpress.com/inquiries/all-inquiries/> (2012. november 20). Under Article 8 of the Optional Protocol, the CEDAW Committee can initiate an inquiry if it has received “reliable information of grave and systematic violations by a State Party.” Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, A/RES/54/4, 1999. október 15. art. 8., <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm> (2012. november 22) (CEDAW Optional Protocol).

⁸ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, A/HRC/11/17,2009. október 5. Conclusions and/or Recommendations 33-38, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/152/99/PDF/G0915299.pdf?OpenElement> (2012. november 21).

⁹ Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada, 36th Session, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 2006. május 1-19. [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/\\$FILE/G0642783.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/$FILE/G0642783.pdf) (2012. november 20).

¹⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc. CERD/C/CAN/CO/18 (2007. május 25), <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm> (2012. november 21).

regards to Indigenous girls and women, these statistics tend to fail at drawing a full picture, since the reports often do not register the Indigenous status of the victims, rendering the plight of Indigenous girls and women invisible, and thus nonexistent.¹¹

The most reliable source of information currently is the National Women's Association of Canada's (NWAC) database. NWAC started a project called *Sisters in Spirit* in 2004, which for the first time collected information specifically with regards to the murders and disappearances of Indigenous women.¹² Since 1980, according to the data collected by NWAC, 582 Indigenous women have been reported killed or missing.¹³ If projected to the general population, this would mean 19,000 murdered or disappeared women.¹⁴ Nongovernmental organizations, however, believe that the actual number of missing and murdered women might actually be much higher.¹⁵ Of the 582 cases compiled by NWAC, almost a third concerned missing or murdered girls and women in British Columbia and this province has the highest number of these cases.¹⁶ With regards to other forms of violence, in 2009 alone, according to official statistics, almost 67,000 Indigenous women, age 15 or older, claimed to have been the victims of violence within the preceding 12 months.¹⁷ This number represents 13% of the entire Indigenous women population.¹⁸ Furthermore, Indigenous women were three times more likely to report having been a victim of violent crimes,¹⁹ and Indigenous women between 25 and 44 are five times more likely to die as a result of violence than all other Canadian women in the same age group.²⁰ According to Amnesty International, this proportion may actually be higher.²¹ Violence with regards to Indigenous women has meant both intimate partner, and other forms of domestic violence, as well as violence at the hands of strangers.²² The age of the victims is also significant. The majority of the murders and disappearances involve young women or girls, especially women aged between 19 and

¹¹ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, pp. 8-9. At the same time, general statistical data – which gives a comprehensive picture on the economic, social and health status of Indigenous women – can be found on Statistics Canada. See O'Donnell, Vivian & Wallace, Susan: First Nations, Metis, and Inuit Women. 2011, július. <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm> (2012. november 22).

¹² NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 9.

¹³ NWAC: Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia, p. 1. http://www.nwac.ca/sites/default/files/imce/FACT%20SHEET_BC.pdf. (2012. november 19) (hereinafter Fact Sheet). NWAC's database is considered by many as one of the best sources for information on the murders and killings of Indigenous women. This data is as of March 31, 2012. See also Amnesty International: No More Stolen Sisters, *supra* note 2, p. 9.

¹⁴ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 9.

¹⁵ Amnesty International: No More Stolen Sisters, *supra* note 1, p. 9.

¹⁶ NWAC: Fact Sheet, *supra* note 13, p. 1. 27% or 160 cases came from British Columbia. *Id.* Of the 160 cases, 63% are murder cases and 24% are cases of missing women and girls. *Id.* Most of the violent incidents occurred in urban areas, with the exception of some rural areas, such as near Highway 16 ("Highway of Tears") where almost 50 women have disappeared so far. *Id.* p. 4.; Nobel Women's Initiative, *The Missing Women on the Highway of Tears*, <http://nobelwomensinitiative.org/2012/10/the-missing-women-on-the-highway-of-tears/>; Lawyers' Rights Watch Canada & the B.C. CEDAW Group: Missing and Murdered Aboriginal Women and Girls, *supra* note 4, p. 7.

¹⁷ Brennan, Shannon: Violent Victimization of Aboriginal Women in the Canadian Provinces. 2009. május., Juristat (Cat. No. 85-002-X). Ottawa, ON: Statistics Canada, 2011. <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.pdf> (2012. november 22).

¹⁸ *Id.*

¹⁹ *Id.* It is worth noting that most violent incidents against Indigenous women are not reported to the police. *Id.* p. 9.

²⁰ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 8.

²¹ Amnesty International: No More Stolen Sisters, *supra* note 1, p. 1.

²² *Id.* p. 2.

30.²³ Children and young girls represent an especially vulnerable part of the population. Another important facet of the issue is that in those cases where there is information about motherhood, a significant majority of the victims were mothers.²⁴

With regards to perpetrators, NWAC's figures indicate that many of the violent incidents were committed by strangers or acquaintances (around 50% altogether of murder cases), whereas intimate partners or family members were involved in 10% of the cases.²⁵ The figures indicate that the mostly male perpetrators²⁶ of extreme violent acts specifically target Indigenous women, abusing their vulnerable situation, and the climate of impunity – which is to be furthered discussed below – that surrounds these crimes.²⁷ Perpetrators of murders of Indigenous women have a lower conviction rate than perpetrators of murders involving non-Indigenous women.²⁸

By the force of the sheer numbers alone, but even more so when evaluated in the specific context of racial and gender discrimination that Indigenous women face in Canada and that provides a stark backdrop, as well as the root cause of the violence that these women and girls endure, it can easily be concluded that Canada is facing – in fact, it has faced for three decades now – an as of yet unresolved human rights crisis.²⁹

II.2. THE HISTORIC, SOCIAL AND ECONOMIC CONTEXT

To fully understand and appreciate the reality in which the murders and disappearances of Indigenous women take place, one must recognize the importance of the historical, social, economic and cultural context of the issue. Colonization and a system of racial discrimination have significantly affected the status of the Indigenous population of Canada, often having a markedly more radical and severe impact on Indigenous women than on men, since in the women's case, systemic racial discrimination was further compounded by systemic sex discrimination.

Among the major losses that the Indigenous population of Canada has suffered was the continuous decrease of their ancestral land, and the loss or diminishment of their cultural, linguistic and religious practices.³⁰ As their right to self-determination diminished, Indigenous people have become more and more dependent on the welfare services and protection of the federal government.³¹ During the same period that the disenfranchisement of the entire Indigenous population was taking place, Indigenous children were forcibly removed from their families and were required to attend residential schools outside the reservations.³² This, together with the constant decrease of Indigenous lands, disenfranchisement, prohibition of Indigenous cultural and religious practices, and lack of a right to legal representation and access to legal aid,³³ have all lead to the intense marginalization of Indigenous communities.³⁴

²³ NWAC: Missing or Murdered Aboriginal Women, *supra* note 3, p. 2.

²⁴ From the 49 cases where such information was available, 88% were mothers. *Id.* p. 3.

²⁵ NWAC, *supra* note 3, p. 5.

²⁶ See Amnesty International: No More Stolen Sisters, *supra* note 1, p.10.

²⁷ *Id.* at 2.

²⁸ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 10.

²⁹ Lawyers' Rights Watch Canada & the B.C. CEDAW Group: Missing and Murdered Aboriginal Women and Girls, *supra* note 4, p. 5.

³⁰ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 18.

³¹ *Id.* p. 23.

³² *Id.*; Amnesty International: Stolen Sisters, *supra* note 2, p. 6.

³³ Lawyers' Rights Watch Canada & the B.C. CEDAW Group: Missing and Murdered Aboriginal Women and Girls, *supra* note 4, pp.7-8.

As Amnesty International notes: “The legacy of these policies have been the erosion of culture, the uprooting of generations of Indigenous women, the separation of children from their parents, and a cycle of impoverishment, despair and broken self-esteem (...).”³⁵

While the entire Indigenous population of Canada has been the victim of widespread discrimination and has been relegated to the peripheries of society, the plight of Indigenous women has been especially hard. For over a century, from the 1870s until the 1980s, Indigenous women would lose their Indigenous status and the protections of the Indian Act,³⁶ such as health benefits, the right to inherit family property or the right to live on the reserve, if they chose to marry a non-Indigenous man.³⁷ Overall, Indigenous women’s status was in general dependent on their husbands’ status, which had dire consequences for them, as they were often cast out of their community, and stripped of all protections that came with the Indian status.³⁸ The Indian Act was finally amended in 1985, not long after both the Canadian Human Rights Commission and the United Nations Human Rights Committee called these provisions a human rights abuse, but this only partially solved the problem.³⁹

The dismantling of the family unit by way of the forced removal of Indigenous children from their families, and by making women’s status entirely dependent on their husbands, had disastrous consequences for Indigenous women, who have been cast to the periphery of society. It is also important to note that Indigenous women’s status further deteriorated as a patriarchal societal structure was superimposed by the settlers over the matriarchal or semi-matriarchal society of the Indigenous population.⁴⁰ The women, who served a critical function within the community as the keepers of tradition and as mothers, were further pushed to the margins of their own community, and often outside it.⁴¹

This history serves as an important contextual background to the situation that many Indigenous women in Canada find themselves in today: marginalized, unemployed, often without adequate shelter, with diminished access to health services, clean water or sanitation, and at an increased risk of violence.⁴² Much of the Indigenous community now lives off-reservations, in non-Indigenous cities and towns.⁴³ Many women, uprooted and separated

³⁴ *Id.*

³⁵ *Id.*

³⁶ Indian Act, R.S.C. 1970, c.I-6, amended by R.S.C. 1970 (2d Supp.), c.10; S.C. 1974-75-76.

c.48, Office Consolidation, <http://laws-lois.justice.gc.ca/eng/acts/I-5/> (2012. november 21).

³⁷ Lawyers’ Rights Watch Canada & the B.C. CEDAW Group: Missing and Murdered Aboriginal Women and Girls, *supra* note 4, p. 6. The same rule did not apply to Indigenous males if they chose to marry a non-Indigenous woman. *Id.* For more on how the Indian Act of 1869 and the Indian Act of 1985 affected Indian women’s status, see Indian Lawyers’ Rights Watch Canada & the B. C. CEDAW Group, *supra* note 14, pp. 7-8. See also NWAC: Aboriginal Women’s Rights are Human Rights, pp. 3-4, <http://action.web.ca/home/narcc/attach/AboriginalWomensRightsAreHumanRights.pdf>. (2012. november 22).

³⁸ Lawyers’ Rights Watch Canada & the B.C. CEDAW Group, *supra* note 4, pp.7-8.

³⁹ NWAC: Aboriginal Women’s Rights are Human Rights, *supra* note 37, pp. 12-13. See also Parliament of Canada, Indian Status and Band Membership Issues, <http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp410-e.htm> (2012. november 22.).

⁴⁰ Amnesty International, *Stolen Sisters*, *supra* note 2, at 6-7; FAFIA: Women’s Inequality in Canada, Submission of the Canadian Feminist Alliance for International Action 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, 2008. szeptember, pp. 24-25, available at http://www.iwraw-ap.org/resources/pdf/42_shadow_reports/Canada_SR_FAFIA.pdf (2012. november 22.)(hereinafter Women’s Inequality in Canada).

⁴¹ *Id.*

⁴² Women’s Inequality in Canada, *supra* note 40, p. 5; NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 19.

⁴³ Amnesty International: *Stolen Sisters*, *supra* note 2, p. 5.

from their communities, lack the adequate means necessary for urban life, and end up homeless and unemployed, which contributes to their desperate and isolated status.⁴⁴ As a result of their economic marginalization, many Indigenous women have resorted to prostitution for a living, which further exacerbates their vulnerability with regards to violence.⁴⁵

The vulnerability of these women, especially the women and young girls who have disappeared or have been murdered, lies at the intersection of race, sex, age, social and economic status.⁴⁶ It is important to note that stereotypes against Indigenous women – often portraying them as promiscuous – have also been a significant factor in the continuous deterioration of the situation.⁴⁷ This vulnerability is compounded by a climate of indifference and impunity that has long been prevalent with regards to violent crimes committed against Indigenous women.⁴⁸ This is partly attributable to a general indifference,⁴⁹ and at times racism, on the part of the majority population vis-à-vis the Indigenous community in general, and the abundance of sexist stereotypes against Indigenous women in specific.⁵⁰ As NWAC notes: “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 among the most socially and economically disadvantaged groups in Canadian society – a reality which is deeply rooted in colonization and its impacts.”⁵¹ As NWAC notes, the discrimination that Indigenous women face operates on several levels: as women within their own communities, as women in mainstream Canadian society, and as Indigenous persons within the mainstream society.⁵² This discrimination is at the root cause of the violence manifested in the disproportionate rate of disappearances and murders of Indigenous women.

II.3. STATE RESPONSE: THE INVESTIGATION OF THE MURDERS AND DISAPPEARANCES OF INDIGENOUS WOMEN

By and large, Canadian authorities have been unable or unwilling to conduct serious investigation into the murders and disappearances of Indigenous women. This inability or unwillingness is part of a larger framework of discrimination that has long characterized the attitude of law enforcement authorities with regards to the Indigenous population.

First, it must be noted that Indigenous people face a wide range of discriminative practices within the criminal justice system. While the treatment they receive as victims is on many occasions subpar, they have higher incarceration rates than non-Indigenous people in

⁴⁴ *Id.*

⁴⁵ *Id.* p. 8.

⁴⁶ Amnesty International: *Stolen Sisters*, *supra* note 2, p. 2.

⁴⁷ *Id.* p.10.

⁴⁸ *Id.* p. 7.

⁴⁹ As one journalist who covered the trial of John Martin Crawford, who was convicted of murdering three Indigenous women in 1996, notes;” I don’t get the sense the general public care much about missing or murdered Aboriginal women. It’s all part of this indifference to the lives of Aboriginal people. They don’t seem to matter as much as white people.” Goulding, Warren quoted in Aleem, Rebecca: *Justice for Girls, International Human Rights Law and Aboriginal Girls in Canada: Never the twain shall meet?*, p 8, 2009, http://www.justiceforgirls.org/international_hr/International%20Human%20Rights%20of%20Indigenous%20Girls.pdf (2012. november 22); *see also* Amnesty International: *Stolen Sisters*, *supra* note 2, p. 2.

⁵⁰ *Id.*

⁵¹ NWAC: *Missing or Murdered Aboriginal Women*, *supra* note 1, p. 3.

⁵² *Id.* p. 5.

Canada.⁵³ As Amnesty International notes, Indigenous people in general are “over-policed and under-protected.”⁵⁴ Indigenous people, women included, face higher rates of arrest and criminal prosecutions.⁵⁵ Indigenous women, once in the criminal justice system, face discriminatory sentencing practices as well as abuse and mistreatment at the hands of the authorities.⁵⁶ An illustrative example of the kind of mistreatment Indigenous women and girls experience by the authorities is the case of David William Ramsay, a former British Columbia Provincial Court judge, who in 2004 pleaded guilty to buying sex and assaulting four Indigenous girls, aged 12-16, all of whom appeared before him in court.⁵⁷ Ramsay was allowed to stay in office for three years after the start of the investigations, during which period he continued the abuse of girls, and was eventually sentenced to seven years in prison, a sentence that many Native associations found abysmally inadequate considering the nature of the crime, the age and vulnerability of the victims, and the status of the perpetrator.⁵⁸

Against this backdrop, Canadian law enforcement – both at the national and the provincial level – has shown significant inability at investigating violent crimes committed against Indigenous women. One of the first issues is that law enforcement authorities have no specific database compiled of the cases of missing and murdered Indigenous women. Police forces do not have to report whether the victim of violence was Indigenous or not,⁵⁹ and there is even less information on disappearances, which are usually not registered on most surveys.⁶⁰ The lack of reliable and specific official data makes the plight of Indigenous women invisible, and diminishes the dimensions of the problem by making any pattern in the murders or killings almost indiscernible. The most reliable, Indigenous-specific information with regards to the murders and disappearances comes through the *Sisters in Spirit* project, which was launched by NWAC in 2004.⁶¹ Between 2005 and 2011, the Canadian Government pledged to provide \$5 million in funds to the project.⁶² It seems, however, that further funding would not be forthcoming for this initiative.⁶³ Lack of reliable information from state authorities, as Amnesty International notes, makes it very hard to estimate the true measure of violence against Indigenous women.⁶⁴ The absence of disaggregate data dissolves and dilutes the crimes committed against these women and leaves them unaddressed, while providing a convenient blindfold to mainstream society about the scope and scale of the problem. A

⁵³ *Id.* p. 20. As NWAC notes, Indigenous women represent 28% of women remanded and 37% of women sentenced to custody, despite the fact that they represent only 4 % of the population. *Id.* Similar figures can be found when looking at the Indigenous population – and not only women – at large. In British Columbia, almost half the youth in custody are Indigenous, despite the fact that they represent only 8% of the population. *Id.*

⁵⁴ Amnesty International: *Stolen Sisters*, *supra* note 2, p. 10; NWAC: *Missing or Murdered Aboriginal Women*, *supra* note 1, p. 20.

⁵⁵ NWAC: *Missing or Murdered Aboriginal Women*, *supra* note 1, p. 20.

⁵⁶ *Id.* p. 5, pp. 20-21.

⁵⁷ NWAC: *Missing or Murdered Aboriginal Women*, *supra* note 1, p. 21. And the case of Ramsay is not singular. As NWAC notes, other officials, including police officers, a lawyer, and a prison guard were accused at the same time of sexual abuse of Indigenous girls, but no action followed. *Id.*

⁵⁸ *Id.*; The Aboriginal Multi-Media Society: *Ramsay Sentence Disappoints Aboriginal Leaders*, 2004, Vol. 22. Issue 4, <http://www.ammsa.com/node/27275> (2012. november 22).

⁵⁹ Amnesty International: *Stolen Sisters*, *supra* note 2, p. 2.

⁶⁰ *Id.*; NWAC: *Missing or Murdered Aboriginal Women*, *supra* note 1, p. 9.

⁶¹ *Id.* p. 9.

⁶² See <http://www.sistersinspirit.ca/index.htm> (2012. november 25).

⁶³ NWAC: *Missing or Murdered Aboriginal Women*, *supra* note 1, p. 16; APTN, National News, *Moon Setting on Sisters in Spirit?*, 2010 november 4. <http://aptn.ca/pages/news/2010/11/04/moon-setting-on-sisters-in-spirit/> (2012. november 25).

⁶⁴ Amnesty International: *Stolen Sisters*, *supra* note 2, p. 4.

further problem with regards to the investigation of the murders and disappearances has been the division of jurisdiction and lack of cooperation and coordination between local police forces and the national law enforcement authorities (the Canadian Mounted Police).⁶⁵

With regards to the murders and disappearances of Indigenous women, police has often been reluctant to commence investigation upon reports of disappearances, referencing the women's lifestyle choices as a reason for failure to take action and undue delays in investigating.⁶⁶ When Indigenous women report abuse, they are often sent back to their abusers without further action.⁶⁷ Families have reported that police has been reluctant to give them information about the status of the investigation in the case of missing or murdered family members.⁶⁸ Amnesty International reported that few police forces have a specific protocol installed for missing cases of Indigenous women, which is a serious omission.⁶⁹ Police officers often fail to show the required sensitivity to these cases, and often lack training to address the specific needs of the Indigenous community in general, and Indigenous women specifically.⁷⁰ This, and the tendency on the part of law enforcement authorities to mistreat Indigenous people in the criminal justice system, has discouraged many victims and families from turning to the police.⁷¹ Another facet of the issue is that there are very few Indigenous officers on the police force, women especially.⁷²

In general, conviction rates for perpetrators of violent crimes against Indigenous women are much lower than the national average.⁷³ Many commentators and observers explain this with the ingrained discrimination – both racial and sex – present in Canadian law enforcement authorities, both at the federal and local level.⁷⁴ An illustrative example of the unwillingness and inability of the police to conduct serious and timely investigation into the murders and disappearances of Indigenous women is the case of serial killer Robert William Pickton. More than 60 women – most of them prostitutes, Indigenous and many struggling with drug addiction – disappeared from Vancouver's Downtown East Side starting in the early 1990s.⁷⁵ Police investigation into the disappearances was reluctant, and law enforcement authorities denied that the incidents had any discernible pattern to them.⁷⁶ Almost a decade later, Robert William Pickton was arrested and charged with the murder of 26 women, most of whom were Indigenous.⁷⁷ Eventually, Pickton was convicted of second-degree murder on six counts, and proceedings were stayed on the other counts.⁷⁸ It took Canadian law enforcement almost a decade to fully investigate the murders. The police – as long as it could – treated the murders

⁶⁵ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 17. On the local level, there is a division among on-reserve, city and provincial forces too. *Id.* See also Aleem, *supra* note 49, p. 12.

⁶⁶ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, pp. 17, 19, 21.

⁶⁷ *Id.* p. 21.

⁶⁸ Amnesty International: Stolen Sisters, *supra* note 2, p. 10.

⁶⁹ *Id.* p. 12. The Royal Canadian Mounted Police requires that a special liaison officer be involved in cases involving a missing Indigenous person, but there are no similar protocols uniformly installed at the local level. *Id.*

⁷⁰ *Id.*, pp. 10-11.

⁷¹ Amnesty International: Stolen Sisters, *supra* note 2, p. 11.

⁷² *Id.*

⁷³ NWAC, *supra* note 1, p. 10.

⁷⁴ *Id.* p. 22.

⁷⁵ NWAC, *supra* note 1, p. 11.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

as isolated incidents, and had failed to discern any pattern in the killings that could point to the systemic nature of the act.⁷⁹

The Pickton case – or more importantly, the clear mishandling of the issue by the police – initiated an inquiry by the Government of British Columbia into the investigations. The Missing Women Commission of Inquiry was formed in 2010 with a mandate to inquire into the investigations of the Downtown Eastside disappearances between 1997 and 2000, the actions of the Criminal Justice Branch, which in 1998 failed to pursue charges against Pickton which could have led to an earlier arrest, and to recommend changes with regards to the initiation and conduct of investigations of the disappearances and murders of women in British Columbia.⁸⁰ The Commission is to submit a final report on the inquiry by November 30, 2012.⁸¹ The Commission's procedure and work has been heavily criticized from the start. The Commission failed to focus specifically on the case of Indigenous missing women, despite their disproportionate number among the victims.⁸² Much criticism surrounded the appointment of Wally Oppal, former British Columbia Attorney General as Commissioner, and the denial of funding to provide legal counsel to women's groups and human rights organizations, which were granted standing, despite the recommendations of the Commissioner.⁸³ Due to lack of funding, NWAC – the only NGO that had been granted full standing – was forced to withdraw from participation; the Commission currently has no participation from any Indigenous organizations.⁸⁴

The Pickton incidence, the practice of untimely, mistake-ridden investigations, the failure of the Commission of Inquiry to fulfill its mandate without controversy and with full participation by the Indigenous women community, are all symptoms of a larger climate of impunity and indifference within Canadian authorities, which is rooted in widespread and deeply-ingrained racial and sex discrimination. Indigenous women, who often find themselves marginalized by their race, sex, social and economic status, disproportionately bear the burden of this indifference.⁸⁵

III. THE LEGAL FRAMEWORK

III.1. POSSIBLE INTERNATIONAL HUMAN RIGHTS VIOLATIONS BY CANADA IN THE CONTEXT OF MISSING AND MURDERED INDIGENOUS WOMEN

Canada has been a member of the U.N. since 1948. In 1976, Canada ratified the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁸⁶ Canada ratified

⁷⁹ Amnesty International: Stolen Sisters, *supra* note 2, p. 14.

⁸⁰ Amnesty International: Stolen Sisters, *supra* note 2, pp. 12-13. For more information on the Missing Women Commission of Inquiry, see <http://www.missingwomeninquiry.ca/> (2012. november 22).

⁸¹ See the website of the Missing Women Commission of Inquiry, *supra* note 80.

⁸² NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 13.

⁸³ *Id.* The practice in Canada is that once standing has been granted, funding for legal counsel is also provided. *Id.* p. 14.

⁸⁴ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, pp. 14-15.

⁸⁵ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, pp. 18-19.

⁸⁶ International Covenant on Civil and Political Rights, G.A. res.22A (XXI), 21 U.N. GAOR Supp. No. 16. , p. 52, U.N. Doc. 6316 (1976. március 23.), <http://www2.ohchr.org/english/law/ccpr.htm> (2021. november 22.) Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR. Supp. No. 16, p. 49, U.N. Doc. A/6316 (1976. március 23.), <http://www2.ohchr.org/english/law/ccpr->

the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981.⁸⁷ In 2002, Canada also ratified the Optional Protocol to CEDAW, adopted by the U.N. General Assembly in 1999.⁸⁸ Canada has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination⁸⁹ (CERD) in 1970. In 2010, Canada also formally endorsed the U.N. Declaration on the Rights of Indigenous People.⁹⁰ In 1991, Canada ratified the U.N. Convention on the Rights of the Child.⁹¹

The murders and disappearances of Indigenous women, and the inaction of Canada with regards to this issue have implicated a number of rights. At the root of the problem lie the systematic racial discrimination against the Indigenous population in general, which is compounded by gender discrimination when it comes to Indigenous women. This raises the issue of the right to equality and to be free from discrimination, which is laid down in Article 8 of the U.N. Charter,⁹² Article 2 of the Universal Declaration of Human Rights,⁹³ Article 2 of ICCPR,⁹⁴ as well as in Articles 1, 2 and 5, among others, of CERD, and Article 2 of CEDAW, among others. Recently Canada also endorsed the U.N. Declaration on the Rights of Indigenous Peoples, which also contains provisions regarding the right to be free from discrimination.⁹⁵ Also relevant in this context are two General Recommendations from the CERD Committee: General Recommendation No. 23 on Indigenous People, which reaffirms the applicability of CERD and its prohibition on discrimination to Indigenous peoples,⁹⁶ and even more importantly, General Recommendation No. 25, which discusses the gender-related dimensions of racial discrimination.⁹⁷ General Recommendation No. 25 discusses how certain forms of racial discrimination may affect women more than men, and may be directed towards women specifically because of their gender.⁹⁸ Moreover, the recommendation notes

one.htm (2012. november 22); International Covenant on Economic, Social and Cultural Rights, G. A. res. 2200A (XXI), 21 U.N. GAOR Supp. No.16. at 49, U.N. Doc. A/6316 (1976. január 3.), <http://www2.ohchr.org/english/law/cescr.htm> (2012. november 22).

⁸⁷ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. 46 at 193, U.N. Doc. A/34/46 (1981. szeptember 3.) <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (2012. november 22).

⁸⁸ CEDAW Optional Protocol, *supra* note 7.

⁸⁹ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), <http://www2.ohchr.org/english/law/cerd.htm> (2012. november 22).

⁹⁰ Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous People, 2012. november 12. <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142> (2012. november 22).

⁹¹ Convention on the Rights of the Child, GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49), p.167, U.N. Doc. A/44/49 (1989) <http://www.unhcr.org/refworld/docid/3ae6b38f0.html> (2012. november 22).

⁹² United Nations, Charter of the United Nations, 1945. október 24. UNTS XVI, <http://www.unhcr.org/refworld/docid/3ae6b3930.html> (2012. november 26.).

⁹³ UN General Assembly, Universal Declaration of Human Rights, 1948. december 10., 217 A (III), <http://www.unhcr.org/refworld/docid/3ae6b3712c.html> (2012. november 26.)

⁹⁴ ICCPR, *supra* note 86, art. 2.

⁹⁵ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, Resolution / adopted by the General Assembly, 2007. október 2. A/RES/61/295, <http://www.unhcr.org/refworld/docid/471355a82.html> ((2012. november 28.)), art. 2, 15, 21, 24.

⁹⁶ UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXIII on Indigenous People, 1997. augusztus 18. A/52/18, Annex V, <http://www.unhcr.ch/tbs/doc.nsf/0/73984290dfea022b802565160056fe1c> ((2012. november 28.))

⁹⁷ UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXV on Gender Related Dimensions of Racial Discrimination, 2000. március 20. A/55/18, Annex V, A/55/18, Annex V, <http://www.unhcr.ch/tbs/doc.nsf/0/76a293e49a88bd23802568bd00538d83?Opendocument> (2012. november 28.) (hereinafter CERD General Recommendation XXV).

⁹⁸ CERD General Recommendation, XXV, *supra* note 97, paras. 1-2.

that women may be hindered by a lack of access to remedies for racial discrimination because of gender-related impediments, such as gender bias in the legal system, or discrimination against women in the private sphere of life.⁹⁹ Both recommendations have relevance to the situation of Indigenous women in Canada, as these women often experience racial and sexual discrimination at the same time, both in the attitude of law enforcement authorities and in their treatment by mainstream society. These recommendations clarify the content of the protected right, as well as the scope and nature of the protection that the state needs to provide regarding that right.

Many of the treaty provisions relating to discrimination do more than just state the right to be protected, they also entail the undertaking of specific measures to eliminate discrimination, leading in the concept of *due diligence* and how it applies to acts of violence against women. Especially relevant in the current situation is Article 4 of the Declaration on the Elimination of Violence against Women, which talks of the obligation of states to take effective measures to protect the equal enjoyment of protected rights by women, and to specifically exercise “due diligence to prevent or investigate, and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private person.”¹⁰⁰ The CEDAW Committee’s General Recommendation No. 19., which establishes that gender-based violence is a form of discrimination against women, also emphasizes the obligation of states to exercise due diligence in the prevention, investigation and punishment of acts of violence against women.¹⁰¹ The U.N. Special Rapporteur on Violence against Women also emphasized the due diligence obligation of states with regards to combating all forms of violence against women, stating: “In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women.”¹⁰²

The right to life is also implicated in the current situation in Canada, protected by virtually all important international and regional treaties.¹⁰³ Once the right to life is implicated, this means that a whole host of other rights have also been implicated, such as the right to personal integrity, access to justice, to name but a few. With regards to the right to life, the issue of due diligence and the duty to take effective measures to protect the right to life also arises, as will be discussed in more detail in the next section.

Overall, however, it can be stated that in the specific situation of murdered and missing Indigenous women in Canada, two main straits of violations can be recognized: violation of the right to equality and non-discrimination, which also relates to the context of violence against women and access to justice, and the right to life. While other rights are necessarily also implicated, these are the main points of concern.

⁹⁹ *Id.* para.2.

¹⁰⁰ UN General Assembly, Declaration on the Elimination of Violence against Women, 1993. December 20. A/RES/48/104, <http://www.unhcr.org/refworld/docid/3b00f25d2c.html> (2012. november 28.), art.3, 4.

¹⁰¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992, A/47/38, <http://www.unhcr.org/refworld/docid/453882a422.html> (2012. november 28.)

¹⁰² Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85, E/CN.4/1996/53, 1996 február 25., <http://www1.umn.edu/humanrts/commission/thematic52/53-wom.htm> (2012. november 28.).

¹⁰³ See, e.g. Universal Declaration of Human Rights, *supra* note 87, art. 3., ICCPR, *supra* note, art.6.

III.2. SPECIFIC RESPONSES AND OBSERVATIONS BY INTERNATIONAL TREATY BODIES

Several treaty bodies have signaled to Canada over the course of the past decade that it needs to address the issue of discrimination and violence against Indigenous women. The Human Rights Council, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights have all issued recommendations with regards to both issues.

A. HUMAN RIGHTS COMMITTEE

The Human Rights Committee reviewed Canada's compliance with the International Covenant on Civil and Political Rights in 2006, and noted with concern the higher rates of violent death among Indigenous women.¹⁰⁴ The Committee also expressed concern that law enforcement authorities did not respond adequately to the specific threats these women faced, and accordingly recommended that Canada gathered statistical data on violence against women, addressed the causes of violence against women, including economic and social marginalization, and ensured effective access to the justice system for these women.¹⁰⁵

B. HUMAN RIGHTS COUNCIL – UNIVERSAL PERIODIC REVIEW

Canada had its Universal Period Report in 2009.¹⁰⁶ In its submission, Canada acknowledged the challenges Indigenous people in general have to face, and that violence against Indigenous women is a cause for concern.¹⁰⁷ The government also promised to continue funding the Sisters in Spirit Program.¹⁰⁸ In its conclusions and recommendations, Canada was called on to take measures to end racial discrimination against the Indigenous population,¹⁰⁹ and to ensure the effective implementation of CEDAW and to take measures to combat discrimination against Indigenous women.¹¹⁰ More specifically, Canada was called on to criminalize domestic violence, to ensure effective access to immediate means of protection, to ensure the prosecution of perpetrators, and to adequately investigate and sanction the perpetrators responsible for the murders and disappearances of Indigenous women.¹¹¹ Canada was also recommended to implement national legislation prohibiting and criminalizing all forms of violence against women and children, especially Indigenous women and children.¹¹² Canada was also called onto to take all necessary measures to end violence against women, including

¹⁰⁴ U.N. Human Rights Committee: Concluding Observations, Canada, CCPR/C/CAN/CO/5, 20 April 2006, para. 23., <http://www.unhcr.org/refworld/country,,,CONCOBSERVATIONS,CAN,,453777a50,0.html> (2012. november 22).

¹⁰⁵ *Id.*

¹⁰⁶ Human Rights Council: Report of Working Group on the Universal Periodic Review, *supra* note 8.

¹⁰⁷ Human Rights Council: Report of Working Group on the Universal Periodic Review, *supra* note 8, paras. 10-11.

¹⁰⁸ *Id.* In 2010, Canada has announced, however, that it would stop provide funding for Sisters in Spirit. NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 16.

¹⁰⁹ Human Rights Council: Report of Working Group on the Universal Periodic Review, *supra* note 8, para. 28.

¹¹⁰ *Id.*, para.27.

¹¹¹ *Id.* para.33.

¹¹² *Id.* para.34.

Indigenous women, and to implement the relevant recommendations of CEDAW and the Human Rights Committee.¹¹³

With regards to law enforcement authorities, Canada was called on to adopt measures that would ensure the accountability of the police “for their proper, sensitive and effective conduct in cases of violence against women,” and to provide better protection for Indigenous women against all forms of violence, also by addressing the larger context of socio-economic status and discrimination against these women.¹¹⁴ Furthermore, the Human Rights Council recommended that Canada systematically investigate and collect data on violence against women,¹¹⁵ that it installs comprehensive reporting regarding the scale and character of violence against Indigenous women as a foundation for a national strategy to combat the issue, with the participation of the representatives of the Indigenous community.¹¹⁶ In response, Canada has accepted these recommendations, and has accepted that the murders and disappearances of Indigenous women represents a pressing concern, and has noted that the Government is determined to investigate cold cases of murders of Indigenous women, has undertaken to identify the causes of violence against women, and to strengthen the criminal justice system’s response to violence against women in general, and Indigenous women specifically.¹¹⁷

C. THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Committee on Economic, Social and Cultural Rights considered the fourth and fifth periodic reports of Canada on the implementation of the International Covenant on Economic, Social and Cultural Rights in May 2006.¹¹⁸ The Committee in its Concluding Observations noted with concern that there are still significant disparities between Indigenous people and the rest of the Canadian population in the enjoyment of the Covenant rights, as well as poverty rates, employment rates, health, housing and education.¹¹⁹ The Committee recommended that Canada take measures to remedy this situation, and also to combat discrimination against Indigenous women, and to assess how much poverty is a discrimination issue in Canada.¹²⁰

D. CEDAW COMMITTEE

In its consideration of the combined sixth and seventh report of Canada in 2008, the CEDAW Committee noted concern over the situation of missing and murdered Indigenous women, and that hundreds of such cases, spreading over two decades, have not been fully investigated and the perpetrators remained unpunished.¹²¹ The CEDAW Committee urged Canada to examine

¹¹³ *Id.* para.35.

¹¹⁴ Human Rights Council: Report of Working Group on the Universal Periodic Review, *supra* note 8, para.36.

¹¹⁵ *Id.* para.37.

¹¹⁶ Human Rights Council: Report of Working Group on the Universal Periodic Review, *supra* note 8, para.38.

¹¹⁷ Universal Periodic Review: Working Group on the Universal Periodic Review, Canada, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/11/17/Add.1,45-50, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/49/PDF/G0913949.pdf?OpenElement> (2012. november 26.)

¹¹⁸ Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 9.

¹¹⁹ *Id.*, para. 153.

¹²⁰ *Id.*, paras. 182-183.

¹²¹ Committee on the Elimination of Discrimination against Women, 42nd Session: Concluding Observations of the Committee on the Elimination of All Forms of Discrimination against Women. 1008. október 22.

the causes of failure to investigate these cases and to urgently carry out a thorough investigation of them, urging also to carry out an analysis regarding whether there is a racialized pattern to the disappearances.¹²² The Committee also expressed concern over the marginalized situation of Indigenous women, and that they continue to suffer from multiple forms of discrimination, and called on Canada to take action to ameliorate the situation.¹²³ The Committee specifically encouraged Canada to take temporary special measures in line with Article 4.1 of the Convention and General Recommendation 25, to eliminate such discrimination.¹²⁴ The Committee also urged Canada to adopt a specific and integrated plan to address the particular conditions of Indigenous women, including housing, violence, social services, employment, education and health, among others.¹²⁵ The Committee also recommended that Canada should enact legislation criminalizing domestic violence against women.¹²⁶

The Committee also asked Canada to provide a follow-up report on the issue of investigating the cases of missing and murdered Indigenous women.¹²⁷ In the follow-up report, Canada admitted that Indigenous women are the most vulnerable members of Canadian society, and that they experience much higher rates of violence than non-Indigenous women.¹²⁸ With regards to specific actions, Canada has noted that it funds the Sisters in Spirit initiative, providing \$5 million between 2005-2010, to conduct research with regards to the underlying factors of gendered racism and violence against Indigenous women and that it continues to raise awareness regarding the problem of missing and murdered women.¹²⁹ With regards to the investigation of these cases, Canada has listed both national and provincial efforts to examine the cold cases, as well community awareness initiatives, and funding of national and provincial projects to provide adequate shelter and to strengthen services to victims of violence, both women and children.¹³⁰ The Committee in response noted the undertaking of these initiatives, but expressed concern that funding listed by Canada is not always exclusively directed to the situation of violence against Indigenous women, and that no substantive progress has been made with regards to the investigation of the unresolved disappearances and murders of Indigenous women.¹³¹

CEDAW/C/CAN/CO/7, at para. 31, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/602/42/PDF/N0860242.pdf?OpenElement> (2012. november 26.).

¹²² *Id.* para. 31.

¹²³ *Id.* para. 43.

¹²⁴ *Id.* para. 44; General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) (2012. november 25).

¹²⁵ *Id.* para.44.

¹²⁶ *Id.* para 30.

¹²⁷ *Id.* para 53.

¹²⁸ Response by Canada to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh periodic report of Canada. 2008. október 22., 2010 február 11. para. 37-38, <http://www2.ohchr.org/english/bodies/cedaw/docs/followup/CEDAW.C.CAN.CO.7.Add.1.pdf> (2012. november 25.) (hereinafter Canada's Response to CEDAW Committee).

¹²⁹ Canada's Response to CEDAW Committee, *supra* note 128, para. 41.

¹³⁰ *Id.* paras. 44-77.

¹³¹ Response to the follow-up report, <http://www2.ohchr.org/english/bodies/cedaw/docs/followup/Canada.pdf> (2012. november 25.). Several NGOs submitted reports to the Committee both in 2008, and in the aftermath of the follow-up report.

As previously noted, the CEDAW Committee decided to initiate an inquiry under Article 8 of the Optional Protocol to the Convention, in 2011, following a request by FAFIA.¹³² Such inquiry can take place if there is reliable information of grave and systematic violations in a country.¹³³ This procedure is rarely invoked, and has so far resulted in only one report, for the disappearances and murders of women in Juárez, Mexico.¹³⁴

E. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

The Committee on the Elimination of Racial Discrimination reviewed Canada's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination in 2012.¹³⁵ In its Concluding Observations, the Committee noted that Canada had taken measures to combat violence against Indigenous women and girls both at the national and provincial level, but expressed concern that these women are still "disproportionately victims of life-threatening forms of violence, spousal homicides, and disappearances."¹³⁶ The Committee recommended that Canada strengthened its efforts to eliminate all forms of violence against Indigenous women by reinforcing prevention programs, facilitating access to justice for Indigenous victims of gender-based violence, by investigating, prosecuting and punishing the perpetrators of such acts of violence, and by raising awareness about the issue.¹³⁷ The Committee also recommended the implementation of a national plan of action on gender-based violence against Indigenous women, with the consultation of the women and their representatives.¹³⁸ The Committee also recommended the creation of a national database on murdered and disappeared Indigenous women.¹³⁹

In light of the above comments and recommendations by international treaty bodies, it is clear that the problem of missing and murdered Indigenous women in Canada represents a human rights violation that gives cause for serious concern. The above observations also reflect the fact that Canada so far has not been able to find an effective resolution to the problem, and has used a piecemeal approach to tackle the issue, without seriously addressing the root causes of violence against Indigenous women and girls.

III.2. POSSIBLE FURTHER HUMAN RIGHTS COMMITMENTS OF CANADA UNDER THE INTER-AMERICAN SYSTEM

Canada is a full member of the Organization of American States since 1990. Accordingly, the American Declaration of the Rights and Duties of Man applies to Canada.¹⁴⁰ Canada has not

¹³² See *supra* notes 6-7, and accompanying text.

¹³³ See *supra* notes 6-7, and accompanying text.

¹³⁴ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 8.

¹³⁵ Committee on the Elimination of Racial Discrimination, 80th Session: Concluding observations of the Committee on the Elimination of Racial Discrimination, 2012. március 9., CERD/C/CAN/CO-19, <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.19-20.pdf> (2012. november 24.) (hereinafter CEDAW Concluding Observations).

¹³⁶ *Id.*, para.17.

¹³⁷ CEDAW Concluding Observations, *supra* note 135, para. 17 (a)(b)(c).

¹³⁸ *Id.* para 17(d)(e).

¹³⁹ *Id.* para 17.

¹⁴⁰ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); 43 AJIL Supp. 133 (1949), <http://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm> (2012. november 26.).

yet not ratified the American Convention on Human Rights,¹⁴¹ and it has not ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)¹⁴² either, another convention that would be relevant in the case of missing and murdered Indigenous women. Nevertheless, Canada still has obligations under the American Declaration, and a petition may be filed against it at the Inter-American Commission based on a violation of a right contained in the Declaration.¹⁴³ The issue of murdered and missing Indigenous women could raise obligations under the Declaration under Article 1 (the right to life), Article 2 (the right to equality), Article 7 (the rights of the child), Article 11 (the right to health and well-being), and Article 18 (right to access to justice).

Canada's commitments under the Inter-American system are especially important in light of the fact that the Inter-American Court has specifically addressed the issues of violence against women, discrimination and due diligence of state actors in a very similar context only recently, in *González et al. v. Mexico* ("Cotton Field")¹⁴⁴. While Canada has not ratified the Charter, the Court's jurisdiction is still an important reference point in the Inter-American Commission's procedure, and in case the Indigenous women of Canada or their representatives decide to file a petition at the Commission, the framework of the Cotton Field case would probably inform the Commission's procedure.

A. THE COTTON FIELD FRAMEWORK

The backdrop of Cotton Field is eerily similar to the Canadian Indigenous women's plight despite the fact that in many respects – economic development, safety, social welfare system, for instance – Canada and Mexico are light-years apart. Yet when looking at the background of the Cotton Field case, similar patterns emerge.

Cotton Field involved a petition regarding the investigation of the disappearance and then death of three young women, 15 to 20 years of age, in Ciudad Juárez, Mexico. The three girls' bodies were found weeks after their disappearance in a cotton field, with signs of sexual and other forms of abuse.¹⁴⁵ The representatives of the families argued that the state of Mexico failed to properly investigate the disappearances, and subsequently the murders of the women. The police did not take the disappearances seriously, failed to conduct a proper investigation, and blamed the victims' lifestyle for their fate.¹⁴⁶ These irregularities in the course of the police proceedings and the indifference and discriminatory attitude that law enforcement authorities showed towards the cases lead to the murders remaining unresolved.

¹⁴¹ Organization of American States, American Convention on Human Rights, "Pact of San José", Costa Rica, 1969. november 22., OAS Treaty Series No. 36, <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm> (2012. november 22.)

¹⁴² Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará"), 1994. június 9., <http://www.unhcr.org/refworld/docid/3ae6b38b1c.html> (2012. november 22.)

¹⁴³ Inter-Am. Ct. H.R., Advisory Opinion OC-10/89, 1989. július 14. (Ser. A.) No. 10 (1989), reprinted in Annual Report 1989, at 109, 100 O.A.S. Doc. OEA/Ser. L/V/III, Doc. 14 (1989), para. 45, http://www1.umn.edu/humanrts/iachr/b_11_4j.htm (2012. november 22.)

¹⁴⁴ *González et al. v. Mexico: Preliminary Objections, Merits, Reparations, and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 205 (2009. november 16.), http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf (2012. november 25.) (hereinafter Cotton Field).

¹⁴⁵ *Cotton Field*, *supra* note 144, paras. 165 – 221.

¹⁴⁶ *Cotton Field*, *supra* note 144, paras. 165 – 221.

As the Commission and the representatives alleged, the three murders were part of a larger pattern of disappearances and murders in Ciudad Juárez, starting from 1993 and ongoing, with more than three hundred confirmed cases of women having disappeared and being murdered since then (with the actual number probably being much higher), many of them having been subjected to rape or other forms of sexual violence, beatings, and mutilation prior to their death.¹⁴⁷ Most of the victims were between 15 to 25 years old, and most of them were students or worked at the maquila factories that cropped up in Mexico after the creation of NAFTA in 1994.¹⁴⁸ Many of the cases related to “gender violence that occurs in a context of systematic discrimination against women,”¹⁴⁹ mostly as a result of shifting societal roles of women and men as a result of new economic roles, and an underlying culture of machismo.¹⁵⁰ In most of the cases, investigation by law enforcement authorities was plagued with irregularities and slowness, and the family members of the victims alleged mistreatment and intimidation on the part of police.¹⁵¹ The majority of the cases remained unresolved as a consequence of these failed investigations.¹⁵²

The Court held Mexico responsible for several violations under the American Convention and also the Convention of Belém do Pará. Most notably, the State was found to have violated the rights to life, personal integrity, and personal liberty under Articles 4(1), 5(1), 5(2) and 7(1) of the American Convention, in connection with a general obligation to ensure such rights under Article 1(1).¹⁵³ Mexico was found to have failed its obligation to adopt domestic legal provisions under Article 2, and its obligations under Article 7(b) and 7(c) of the Convention of Belém do Pará, and to comply with a duty to investigate and thus guarantee the rights to life, personal integrity, and personal liberty, as well as the right to access to justice and to judicial protection (Articles 8(1) and 25(1) of the American Convention).¹⁵⁴ The state also failed to comply with its obligation not to discriminate under Article 1(1) of the American Convention.¹⁵⁵ Mexico was also found in violation of the rights of the child under Article 19 of the American Convention¹⁵⁶.

The legal framework of the Cotton Field decision rests on multiple legs. First of all, the Court reaffirmed the link established in the case of *Miguel Castro Castro Prison v. Peru*¹⁵⁷ between the Convention of Belém do Pará and the American Convention, using the definition of violence against women as defined under the former as a reference for interpretation under the American Convention.¹⁵⁸ The Convention of Belém do Pará defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or

¹⁴⁷ *Id.*, paras. 115-121, 124-127.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*, para. 133.

¹⁵⁰ Red Mesa de Mujeres de Ciudad Juárez A.C. & Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer – CLADEM: Cotton Field: Proposals for Analysis and Monitoring of the “Cotton Field” Case Sentence, regarding Human Rights Violations Committed by the Mexican State, Mexico City, 2010. february, pp. 30-31, <http://mesademujeresjuarez.org/pdf/field.pdf> (2012. november 28.)

¹⁵¹ *Id.*, paras 146, 149-163.

¹⁵² *Id.*

¹⁵³ American Convention, *supra* note 141, art. 1(1)4(1), 5(1), 5(2), 7(1).

¹⁵⁴ American Convention, *supra* note 141, art.2, 8(1), 25(1). Convention of Belém do Pará, *supra* note 142, art. 7(b)(c).

¹⁵⁵ *Id.*, art. 1(1).

¹⁵⁶ *Id.*, art. 19.

¹⁵⁷ Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. 2006. november 25.. Series C No. 160, para. 276.

¹⁵⁸ Cotton Field, *supra* note 144, paras. 224-225.

psychological harm or suffering to women, whether in the public or the private sphere.”¹⁵⁹ The Court found that the victims in Cotton Field were victims of violence against women under the American Convention and the Convention of Belém do Pará.

Second, the Court established that pursuant to Article 1(1) of the American Convention, states have to respect and ensure the human rights established therein.¹⁶⁰ More important in this case is the right to ensure, or to guarantee, which is to be fulfilled in different ways, depending on the specific right to be guaranteed.¹⁶¹ A state under this obligation would have to organize its government apparatus in a way to be able to ensure the free and full exercise of human rights.¹⁶² This entails the duty of the state to prevent human rights violations, and to “use its means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose appropriate punishments on them, and to ensure the victim adequate compensation.”¹⁶³ Consequently, the Court needs to establish whether a violation occurred with the support of the government, or whether the State did not act to prevent the act, or failed to punish the perpetrators.¹⁶⁴ This obligation thus entails more than just refraining from violating certain rights; it also means that the state has to take positive steps to provide protection to the rights in danger.¹⁶⁵ In Cotton Field, this meant a determination of whether there were adequate measures taken by the government to prevent the disappearance and death of the victims, and whether due diligence was shown in the investigation.¹⁶⁶

This is an obligation of means and measures, not ends, so that the fact that death or disappearance takes place does not necessarily mean that there is also a violation.¹⁶⁷ In cases of violence against women, due diligence needs to be shown in the prevention, punishment and elimination of such violence.¹⁶⁸ This means that the state must put in place an appropriate legal and institutional framework for prevention, especially for vulnerable groups.¹⁶⁹ This obligation to put in place preventive and protective measures for private individuals in their relationship with each other is conditioned on the awareness by the state of a “situation of real and imminent danger for a specific individual”, and the “reasonable possibility of preventing or avoiding that danger.”¹⁷⁰ But once that condition is satisfied, and a disappearance does happen, the state must act promptly, and follow adequate procedures in investigating these events, especially if there is a known pattern of disappearances and murders.¹⁷¹ Due diligence in such situations operates at an elevated level, as an “obligation of strict due diligence”.¹⁷² The state thus must adopt the necessary laws to investigate and punish violence against women in order to comply with the due diligence obligation under Article 7(b) of the Convention of Belém do Pará, to protect the right to life under Article 1 of the American

¹⁵⁹ Convention of Belém do Pará, *supra* note 142, art. 1.

¹⁶⁰ *Cotton Field*, *supra* note 144, para. 234.

¹⁶¹ *Id.*, para. 235.

¹⁶² *Id.*

¹⁶³ *Id.* para.236.

¹⁶⁴ *Cotton Field*, *supra* note 144, para 236.

¹⁶⁵ *Id.*, para. 243.

¹⁶⁶ *Id.*, para.248.

¹⁶⁷ *Cotton Field*, *supra* note 144, para. 252.

¹⁶⁸ *Id.* para.253.

¹⁶⁹ *Id.* paras. 258, 282.

¹⁷⁰ *Id.* para. 280.

¹⁷¹ *Id.* para. 282.

¹⁷² *Id.* para. 283.

Convention.¹⁷³ There is thus a substantive obligation under the American Convention that is to be fulfilled by compliance with Article 7(b) and 7(c) of the Convention of Belém do Pará, a more procedural requirement. Moreover, the Court takes its own standard and elevates it by stating that the obligation of effective investigation “has a wider scope when dealing with a 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,”¹⁷⁴ such as here.

With regards to the obligation not to discriminate, the Commission argued that for the true scope of due diligence to be properly laid out in the case of the three murdered women, the “relationship between the violence against women and the discrimination that perpetuates it” must be examined. In this instance, the law enforcement authorities’ inadequacy in terms of investigating the disappearances and murders was influenced by discriminatory attitudes, as evidenced by discriminatory remarks officers made in the course of the investigation with regards to the victims, blaming the victims’ lifestyle for their disappearance.¹⁷⁵ Mexico itself made admissions that a “culture of discrimination” was the reason why initially the murders in Juárez were not perceived as a serious problem requiring immediate official response.¹⁷⁶ The preconceptions that the police investigating the disappearances has shown in terms of stereotypes and the proper role of women in society has influenced the effectiveness of the investigation, and by creating a climate of impunity, has contributed to the cause of the violence against these women.¹⁷⁷

The Cotton Field case put together a comprehensive scheme of due diligence, which operates on the one hand in prevention, requiring the installation of a legal and institutional framework that is capable of providing prevention from violations in case of imminent and real, known threat, and by emphasizing that the state has a “strict due diligence” standard to comply with in the course of investigations and persecutions of cases of violence against women once a pattern has been established. This comprehensive framework was also complemented by an innovative reparations scheme in Cotton Field, where the Court stated that the concept of “integral reparation” entails not merely the re-establishment of the previous situation and the elimination of the effects, but something more: it must also be aimed at eradicating the structural discrimination that is at the root cause of the problem; thus the objective is rectification, as well as reparation.¹⁷⁸ This reparations system in the specific case consisted of a number of elements, such as the investigation of the crimes, the punishment of the perpetrators, the public acknowledgment by the state of international responsibility, the installation of a comprehensive policy of prevention, investigation and punishment of such cases, the implementation of a program to look for and find missing women in the state of Chihuahua, the creation of a national database of disappeared girls and women, a prohibition on officials to discriminate based on gender, gender-sensitive training for public officials and the general public, as well as compensation and rehabilitation measures for the victims’ families.¹⁷⁹

Together with this integral reparations scheme, the Cotton Field framework is important because it clarifies the meaning of due diligence, and strict due diligence in the case of missing and murdered women. It also reaffirms the link between the Convention of Belém do

¹⁷³ *Id.* para.287.

¹⁷⁴ *Cotton Field*, *supra* note 144, para.293.

¹⁷⁵ *Id.* paras.390, 400.

¹⁷⁶ *Id.* para.398.

¹⁷⁷ *Id.* paras. 400-402.

¹⁷⁸ *Id.* para.450.

¹⁷⁹ *Cotton Field*, *supra* note 144, paras. 446-550.

Pará and the American Convention, and how the procedural requirements of the former complement the substantive rules of the latter, and how the two form part of the same *corpus juris*. The decision also highlights the intricate ways that discrimination and violence against women intersect, and how the state's responsibility to prevent, punish, eliminate violence, and practice due diligence is necessarily intertwined with the obligation to eradicate the root cause of the problem: discrimination against women.

B. APPLYING THE FRAMEWORK TO THE SITUATION OF MISSING AND MURDERED INDIGENOUS WOMEN IN CANADA

Applying this framework to the case of the missing and murdered Indigenous women in Canada, some similarities necessarily emerge, such as the failure of police to investigate, to take the disappearances seriously, the low conviction rate of perpetrators of violence against Indigenous women, the denial of a pattern in the disappearances and the murders, the lack of an official, national database of missing women, the irregularities in investigations, the pervasive discriminatory attitude of the police towards the victims and their families, to name but a few aspects. In the case of the Indigenous women in Canada, sexual discrimination is further compounded by racial discrimination, and their Indigenous status – and often, age, which is another similarity with Cotton Field – puts them in an even more vulnerable position, which states have to take into account when they adopt measures to combat all forms of violence.¹⁸⁰

Canada has acted to a certain extent to remedy the situation by providing more funding for the police training, and for the Sisters in Spirit Project, as well as for other preventive programs. It also set up the B.C. Commission of Inquiry into the disappearances and murders on Vancouver's Downtown Eastside.¹⁸¹ Clearly, many of these projects have only happened because of the attention the issue has received from various international treaty bodies. It is also clear that the issue is far from resolved: reparations have not been made, resolution has not been provided in many of the cases, and there is still no national action plan adopted that would enable the government to set in place a comprehensive scheme to deal with this issue. Moreover, the root cause of the problem, widespread racial and sex discrimination against Indigenous women, has not been addressed, and without that, there is very little chance for true resolution.

It also must be noted that the Court in *Cotton Field* applied the Convention of Belém do Pará and the American Convention, and Canada has not ratified either of these. The American Declaration would, of course, still set obligations for Canada, and provide protection for the right to life, liberty and personal security, as well as the right to equality.¹⁸² Moreover, petitions could be filed against Canada at the Commission, and the Commission's procedure would probably be influenced by the Court's jurisprudence. In this respect, the *Jessica Lenahan (González) v. United States*¹⁸³ case must be made note of. In *Lenahan*, the petitioner claimed that the U.S. violated her rights because the police repeatedly failed to enforce a restraining order against her husband, who subsequently killed her three children, and since the U.S. Supreme Court found that the police had no constitutional duty to enforce a

¹⁸⁰ *Jessica Lenahan (González) v. United States*, Case 12.626, Inter-American Comm'n. H. R. Report No. 80/11 (2011), para. 127 (hereinafter *Lenahan*).

¹⁸¹ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, pp. 16-18.

¹⁸² American Convention, *supra* note 141, art.1.,2.

¹⁸³ *Lenahan*, *supra* note 180.

restraining order,¹⁸⁴ she found herself without any form of domestic remedy. Lenahan alleged that the state had a duty to show due diligence in preventing violence against women, even with regards to private action.¹⁸⁵ The U.S. argued that the American Declaration is not a binding document, and that the content of due diligence was “substantively unclear.”¹⁸⁶ The Commission, however, found that the U.S. failed to act with due diligence to protect petitioner and her daughters, and this constituted a violation of the state’s obligation not to discriminate and to provide equal protection under Article 2 of the American Declaration,¹⁸⁷ two rights which are “fundamental principles of the Inter-American system of human rights.”¹⁸⁸ The Commission also held that member states do have an obligation to respect the rights established in the American Declaration, even if they are not a member to the American Convention.¹⁸⁹ The Commission also reaffirmed that the due diligence standard is the relevant standard with regards to state obligation to prevent, eliminate and punish violence against women, applicable to all OAS member states, and failure to act with due diligence on the state’s part, even in the context of domestic violence, is a form of discrimination.¹⁹⁰ The Lenahan decision is important in the context of Canada, because Canada – similarly to the U.S. – has not signed the American Convention, nor the Convention of Belém do Pará, but the Commission nevertheless found that in the context of violence against women, the due diligence standard is applicable through the American Declaration.

For now, no petition has been filed against Canada at the Court. As the most recent development, NWAC, together with FAFIA and the University of Miami Human Rights Clinic, prepared a submission and appeared before the Inter-American Commission on Human Rights on March 28, 2012, to ask the Commission to examine the murders and disappearances of Indigenous women.¹⁹¹ The Commission was also invited by NWAC to conduct an on-site visit to examine the situation more closely.¹⁹² In case a petition is to be launched, the first question is whether the fact that a process has already started under Article 8 of the CEDAW Optional Protocol is relevant in the context of duplication of procedures, since the Commission will not consider a petition if the subject matter has already been examined or is being examined by another international organization.¹⁹³ Although the CEDAW Committee has agreed to initiate an inquiry into the situation of missing and murdered Indigenous women in Canada, the procedure might not be considered a duplicate procedure, since it leads to no remedies, as opposed to the Commission’s procedure. Interestingly, the one time the Article 8 procedure has been initiated before was in the case of the Juárez murders.¹⁹⁴

¹⁸⁴ Town of Castle Rock, Colorado v. Gonzales, 545 U.S. 748 (2005).

¹⁸⁵ Lenahan, *supra* note 180, para.5.

¹⁸⁶ *Id.* para. 55, 106.

¹⁸⁷ Lenahan, *supra* note 180, para.199.

¹⁸⁸ *Id.*, para. 106.

¹⁸⁹ *Id.* para. 115-117.

¹⁹⁰ *Id.* para. 170.

¹⁹¹ NWAC: Missing and Murdered Aboriginal Women, *supra* note 1, p. 27.

¹⁹² *Id.* p. 29.

¹⁹³ Shelton, Dinah L.: The Inter-American Human Rights System. In Hannum, Hurst, Anaya, S. James & Shelton, Dinah L.: International Human Rights, Problems of Law, Policy, and Practice, 5th ed., 2011. p. 824. Rules of Procedure of the Inter-American Commission on Human Rights, Approved by the Commission at its 109th special session, 2000. december 4-8., and amended at its 116th regular period of sessions, 2002. október 7-25., art. 33., http://www.oas.org/xxxi/vga/english/reference_docs/Reglamento_CIDH.pdf (2012. november 26.).

¹⁹⁴ See *supra* note 134.

There still remains the question of admissibility. In light of the long-term nature of the violations, and how the Commission has taken on the case of Lenahan, for instance, which was set against a background of a historic problem with the enforcement of domestic violence restraining orders,¹⁹⁵ there is a possibility that the Commission would deem the Indigenous women's case admissible. Whether there would be enough evidence to show that Canada has not fulfilled its due diligence obligations, is another question, and one that is best left to the Commission to decide, if a petition is to be filed, and if it is deemed admissible. What needs to be kept in mind though is that a decision by any court or body is rarely the clear end point of the legal process and nor should it be. Change must come on a more comprehensive scale.

IV. RECOMMENDATIONS

Canada's approach with regards to the problem of missing and murdered Indigenous women has been, as Amnesty International noted, "piecemeal at best."¹⁹⁶ *Ad hoc* measures will not be able to resolve the systematic racial and sex discrimination that lies at the root of the problem, and will do little to ameliorate the economic and social situation of Indigenous women, which is at the foundation of their vulnerable situation and that puts them at a heightened risk of violence of all forms. Moreover, such piecemeal approach is signaling a lack of veritable political will on the part of the government – and society at large – to change the situation. Any efforts to combat the problem of missing and murdered Indigenous women, and the disproportionate rates of violence against Indigenous women in general, have to move on two fronts: first, they have to address comprehensively the problem of violence against Indigenous women, and second, the root causes of such violence, such as discrimination and marginalization of the Indigenous population, and Indigenous women specifically, need to be addressed at the national level.

First and foremost, Canada should implement a national plan of action to combat violence against Indigenous women.¹⁹⁷ It should also create a national website specifically for missing Indigenous women. Police would have to report on the Indigenous status of murder victims and disappeared persons. Since Indigenous women are a vulnerable group within society due to their Indigenous status, their social and economic situation, their gender, and in some cases, their age, any measure addressing the situation has to take this into account. Accordingly, specific protocols should be implemented nationwide to handle cases of missing Indigenous women.¹⁹⁸ Police protocols would have to ensure prompt and serious response from the authorities in case of disappearances. Moreover, police should receive cultural sensitivity training to be able to gain the trust of Indigenous victims and their family members and there should be increased recruitment of Indigenous men and women into the police forces.¹⁹⁹ Raising awareness in mainstream society would also be necessary to combat entrenched stereotypes about Indigenous women. With regards to law enforcement authorities, enhanced cooperation must be ensured between the national and local authorities, to ensure effective investigation.

¹⁹⁵ Lenahan, *supra* note 180, paras. 92-100, 161.

¹⁹⁶ Amnesty International: No More Stolen Sisters, *supra* note 1, p. 4.

¹⁹⁷ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 28.

¹⁹⁸ Amnesty International: Stolen Sisters, *supra* note 2, p. 14.

¹⁹⁹ *Id.* p. 15.

Consistent, long-term funding must be allocated by the government to shelters and community programs helping Indigenous women.²⁰⁰ Funding also needs to be provided for legal aid services,²⁰¹ and for legal counsel in case standing has been granted to Indigenous representatives, such as in the case of the B.C. Commission of Inquiry. Overall, the government needs to encourage the full participation of the Indigenous community in decision-making and must ensure enhanced cooperation between law enforcement authorities and Indigenous representatives and other civil society groups that work for the same goals.²⁰²

There must be serious efforts undertaken to address the underlying root causes of discrimination and inequality with regards to Indigenous people, and specifically women, in Canada. Reform efforts must be undertaken with regards in the economic, social, housing, education and health sectors to improve the lives of Indigenous people, in accordance with the relevant recommendations of international treaty bodies.

Most importantly, Canada has to take seriously its existing international human rights obligations and implement the recommendations of the Human Rights Council, the CEDAW Committee, the Committee on Economic, Social and Cultural Rights, and CERD. Moreover, Canada should consider ratifying the American Convention as well as the Convention of Belém do Pará. The international community itself must monitor this situation closely through the relevant treaty bodies, and make sure that Canada undertakes a serious effort to remedy the current situation. While enforcement and change is to happen at the domestic level, the international community has a responsibility to ensure that the changes that need to happen do happen, and entail substantive reforms.

²⁰⁰ Amnesty International: Stolen Sisters, *supra* note 2, p. 15.

²⁰¹ NWAC: Missing or Murdered Aboriginal Women, *supra* note 1, p. 28.

²⁰² *Id.* p. 28.