CANADA’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND THE TRAGEDY OF MISSING AND MURDERED ABORIGINAL WOMEN

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The tragedy of missing and murdered Aboriginal women in Canada has been the subject of national and international scrutiny throughout the last decade. Numerous reports by national and international bodies have identified this ongoing and pressing problem, and have urged Canada to fulfill its obligations on this issue. Canada’s obligations toward Aboriginal women flow not only from domestic laws, but also from Canada’s many international commitments.

This paper examines how Canada is in breach of a number of its international human rights obligations towards missing and murdered Aboriginal women. Part I examines the issue of missing and murdered Aboriginal women, outlining key statistics compiled by the Native Women’s Association of Canada (“NWAC”). This section also scrutinizes the contributory role of police. Part II discusses international legal instruments relevant to the topic of missing and murdered Aboriginal women, as well as commentary and case law from international human rights bodies. Part III provides a timeline of reports and recommendations made by national and international bodies, including a critical assessment of Canadian responses. Finally, Part IV discusses paths forward and recommendations on urgent measures to be adopted by the Canadian government.

As more cases of missing and murdered Aboriginal women continue to emerge, and Canada remains in breach of its international human rights obligations to Aboriginal women, I argue a national inquiry is needed immediately. A national inquiry, coupled with expanded domestic remedies—such as improvements to criminal investigations and compensation—will enable Canada to demonstrate its commitment to this matter, and fulfill its international obligations.

PART I: MISSING AND MURDERED ABORIGINAL WOMEN

A. The Sisters in Spirit Initiative: Diagnosing the Problem

Beginning in the 1980s, Aboriginal communities across Canada began voicing their concerns about missing and murdered Aboriginal women. In 2004, NWAC launched the Sisters in Spirit campaign to address this ongoing violence. As part of the campaign, NWAC sought help from a range of federal government departments to address the issue. In 2005, the Ministry

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1 In this paper, I use the term “women” as reference to women and girls. I also use the term “Aboriginal”. This term is meant to be inclusive, encompassing First Nation, Métis and Inuit peoples.

2 See Part III: Reports, Recommendations, and Responses, below.


of Status of Women Canada agreed to fund the *Sisters in Spirit* initiative for five years. With this funding, NWAC created a database of missing and murdered Aboriginal women across Canada. The final report was released in 2010.\(^5\)

The findings of the report are striking. As of March 31, 2010, the initiative had documented 582 cases of missing and murdered Aboriginal women across Canada, with the caveat that “it is believed the scope of this violence is far greater than what has been documented”.\(^6\) Of the 582 cases, 393 involved death as a result of homicide or negligence, 115 involved missing women and girls, twenty-one involved suspicious deaths, and fifty-three were cases of an unknown nature—it was unclear whether the women had died, were missing, or were murdered.\(^7\) Almost half of the murder cases remained unsolved, a statistic that is “dramatically different from the average clearance rate for homicides in Canada, which was reported by Statistics Canada at 84% in 2005”.\(^8\)

Of the 393 cases involving death as a result of homicide or negligence, in 234 instances, the location of the victim was known. Of these 234 cases, fifty-nine percent of Aboriginal women were found in their residential dwelling, suggesting a link with family violence.\(^9\) In fifteen percent of cases, the violence happened in an open area, like a field. In fourteen percent of cases, the violence took place on a street, road, or highway.\(^10\)

NWAC reports 261 cases where information is known and charges were laid. Of the 261 cases, twenty-three percent of the accused offenders were the victim’s current or ex-partner, seventeen percent were acquaintances, and 16.5 percent were strangers with no connection to the woman. Based on this research, NWAC found that Aboriginal women in Canada were almost three times more likely to be killed by a stranger than non-Aboriginal women.\(^11\) As for cases of missing Aboriginal women, in over seventy percent of cases, women went missing from an urban area, twenty percent from a rural area, and seven percent from a reserve.\(^12\)

NWAC also looked into the link between prostitution and disappearance or death, given the high levels of vulnerability to violence women in the sex trade face. Information was only known about the women’s involvement in prostitution for 149 cases. In about half of the 149 cases, the women were not involved in the sex trade, in contrast to fifty-one cases where they were.\(^13\) In a further twenty-four cases, there was insufficient evidence to substantiate claims of involvement in the sex trade. Regardless, NWAC emphasized that prostitution itself “is not a cause of disappearances or murders; rather, many women arrive at that point in the context of limited options and after experiencing multiple forms of trauma or victimization.”\(^14\)

These “multiple forms of trauma or victimization” are common to many missing and murdered Aboriginal women—not just sex trade workers—and speak to the many underlying causes of violence against these women.\(^15\) While there are many underlying causes of violence

\(^5\) Ibid.
\(^6\) Ibid at 17-18. See Part III: Reports, Recommendations, and Responses, below (the number of missing and murdered Aboriginal women has increased since 2010).
\(^7\) Supra note 4 at 18.
\(^8\) Ibid at 27.
\(^9\) Ibid at 29.
\(^10\) Ibid.
\(^11\) Ibid.
\(^12\) Ibid at 26-27.
\(^13\) Ibid at 31.
\(^14\) Ibid.
\(^15\) Ibid.
against Aboriginal women, “colonization remains the constant thread connecting the different forms of violence against Aboriginal women in Canada”.\textsuperscript{16} Aboriginal peoples have identified historic colonialisim policies, such as the residential school system, as a root cause of violence in their communities.\textsuperscript{17} Amnesty International also identifies a number of current factors that contribute to the heightened risk of violence against Aboriginal women: the marginalization of Aboriginal women, police failure to provide adequate protection, and racist motivations, or the expectation of impunity.\textsuperscript{18} Although intensive analysis of the underlying causes of violence is beyond the scope of this paper, the police’s responsibility for missing and murdered Aboriginal women is considered in the next section.

B. The Role of Police and Problematic Investigations

There are a number of problems with police investigations of missing and murdered Aboriginal women in Canada. First, nearly half of the murder cases involving Aboriginal women remain unsolved. Second, police data do not consistently identify whether victims of violence have Aboriginal status, and if they are First Nations, Métis or Inuit.\textsuperscript{19} For example, Statistics Canada’s annual Homicide Survey asks police to record the number of Aboriginal victims and persons charged. NWAC found that:

\begin{quote}
[S]ome police agencies…refused to collect or report the data, arguing that collection of such information contravenes internal policy, that the information is not needed for the agency's own purposes, or that police officers find it impractical, uncomfortable or insensitive to ask individuals about their cultural background.\textsuperscript{20}
\end{quote}

While these may be legitimate concerns, they preclude collecting comprehensive statistics that could help determine the scope of the problem. Further, NWAC consulted ten Aboriginal communities across Canada to see if they would be amenable to the Committee collecting information about Aboriginal identity. The consulted communities agreed, provided the questions are framed in a culturally sensitive manner.\textsuperscript{21}

Another problem is that many police forces do not have protocols for when Aboriginal women are reported missing. There are stories of police failing to take basic steps, such as interviewing family and friends in a timely manner after the report of a missing person.\textsuperscript{22} Further, “overlapping and unclear jurisdictional areas of the RCMP, First Nations, municipal and provincial police forces has impeded effective resolution of some cases”.\textsuperscript{23} Families who report missing persons have sometimes been sent back and forth between police forces.\textsuperscript{24}

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{16} Ibid at 2.
\item\textsuperscript{17} House of Commons, Standing Committee on the Status of Women, \textit{Ending Violence Against Aboriginal Women and Girls: Empowerment – A New Beginning} (December 2011) at 32 (Chair: Irene Mathyssen) [Standing Committee].
\item\textsuperscript{18} Amnesty International, \textit{Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada} (October 2004) at 2, online: YWCA Canada <ywcacanada.ca/data/research_docs/00000024.pdf> [Amnesty International, \textit{Stolen Sisters}].
\item\textsuperscript{19} Supra note 17 at 14.
\item\textsuperscript{20} Native Women’s Association of Canada, \textit{supra} note 4 at 16.
\item\textsuperscript{21} Supra note 17 at 14-15.
\item\textsuperscript{22} Supra note 18 at 32.
\item\textsuperscript{23} Supra note 4 at 38.
\item\textsuperscript{24} Ibid.
\end{enumerate}
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Finally, police mistrust is a persistent problem. Reports of abusive policing of Aboriginal peoples, and research indicating “police often stereotype missing Aboriginal girls and act based on those stereotypes”, add to Aboriginal peoples’ lack of confidence in police services. This mistrust is especially troubling for women in the sex trade, as they may be hesitant to report violent attacks to police, due to the threat of arrest for engaging in prostitution.

These issues indicate systemic problems within police practices, and arguably contribute to the issue of missing and murdered Aboriginal women. In the next section, I turn to international human rights law, outlining Canada’s obligations to protect Aboriginal women from violence.

PART II: APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW

This section examines international human rights law triggered by missing and murdered Aboriginal women in Canada. From the outset, I focus on two treaties, to which Canada is a party: the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women. I discuss Commentary by the Human Rights Committee and the Convention Committee (the “Committee”), as well as relevant jurisprudence, to provide insight into Canada’s obligations arising under the ICCPR and the Convention. Finally, I examine the importance of the United Nations’ (the “UN”) Declaration on the Rights of Indigenous Peoples.

A. The International Covenant on Civil and Political Rights

In 1976, the ICCPR came into force, and was acceded to by Canada. Pursuant to article 9 of this multilateral treaty, disappearances violate the right to liberty and security of the person. Pursuant to article 6(1), the inherent right to life is contravened in cases of murder, and where disappearance leads to death. The Human Rights Committee, the oversight body to the ICCPR, clarified the scope of a state’s obligation to protect the right to life with respect to disappearances in General Comment No 6:

26  Native Women’s Association of Canada, supra note 4 at 32-33.
27  Amnesty International, Stolen Sisters, supra note 18 at 27.
30  ICCPR, supra note 28, arts 6, 9.
States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.31

The Human Rights Committee urges signatories to thoroughly investigate existing cases of missing persons, and pre-emptively enact protocols that prevent disappearances. While the Human Rights Committee’s General Comment No 6 is non-binding, it provides useful guidance in interpreting the right to life provisions that relate to disappearances.

Article 2 of the ICCPR is also relevant. It provides that each state party will “respect and ensure” ICCPR rights to individuals within its territory and jurisdiction, without distinction. Enumerated rights include race, colour, and sex. Each state party must provide effective remedies for rights violations.32 The Human Rights Committee refers to article 2 as encompassing a “due diligence” obligation. The due diligence obligations involves preventing, punishing, investigating, or redressing the harm committed by private persons or entities who have violated ICCPR rights.33 The Human Rights Committee reminds signatories “of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2[(3)]”.34

Finally, article 26 of the ICCPR provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”35 In the case of missing and murdered Aboriginal women, entitlement to equal protection of the law without discrimination is relevant. The police play a crucial role in protection, prevention, and investigation; yet, issues relating to unequal treatment of Aboriginal women by Canadian police forces remain.

B. The Convention on the Elimination of All Forms of Discrimination against Women

Another Canadian obligation under international law is the Convention. Canada ratified the Convention in 1981, the same year the treaty came into force.36 The Convention focuses on discrimination against women, and does not have express provisions on violence. However, in General Recommendation No 19, the Committee extended the article 1 definition of “discrimination against women” to include gender-based violence.37 In this broader definition, the right to life, liberty and security of the person is protected.38 General Recommendation No 19 is not binding, and thus neither is the expanded definition of discrimination. Regardless, the
Committee’s justification that gender-based violence “seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”, is compelling. General Recommendation No 19 is also the most frequently cited of the Committee's recommendations, nationally and internationally.

The Convention contains a two-pronged obligation in relation to discrimination. Article 2 mandates that states condemn discrimination against women. Article also compels states,

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;  
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

In the case of missing and murdered Aboriginal women, police forces must refrain from discriminating against women, and take measures to eliminate discrimination by private persons—the due diligence obligation. The Committee confirmed this two-pronged obligation in General Recommendation No 19:

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)...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.

The mention of compensation is important, given that the Convention itself does not discuss remedies. In General Recommendation No 19, the Committee recommends in cases of gender-based violence that “[effective] complaints procedures and remedies, including compensation, should be provided”. In the following subsections, I examine Committee cases concerning remedies. I discuss the relevance of these remedies to the Canadian context in Part IV.

C. Convention Jurisprudence: The Remedy of Systemic Measures

In 2007, two Committee cases dealt with remedies for state failure to protect women against violence, Goekce v Austria, and Yildirim v Austria. The two cases involved similar facts: both women were killed by their husband after a pattern of physical abuse, and both women sought assistance several times from law-enforcement agencies and courts. Two non-governmental organizations (“NGOs”) brought these cases to the Committee on behalf of family

39 Ibid at para 1.  
41 Convention, supra note 28, arts 2(d)-(e) [emphasis added].  
42 General Recommendation No 19, supra note 37 at para 9.  
43 Ibid at para 24(i).  
members of the women.\textsuperscript{45}

In \textit{Goekce v Austria}, Şahide Goekce was in contact with police over a three-year period about her physically abusive husband. She obtained a three-month injunction prohibiting him from entering the family apartment.\textsuperscript{46} This injunction, and a weapons prohibition, was in effect at the time of her death. Despite the orders, her husband acquired a handgun, and a few weeks later, shot Ms. Goekce in her apartment. A few hours before she was killed, Ms. Goekce telephoned the emergency call service, but no patrol car was sent.\textsuperscript{47} The Committee concluded that “the police knew or should have known that Şahide Goekce was in serious danger; they should have treated the last call from her as an emergency”, and that “the police are accountable [for] failing to exercise due diligence to protect [her]”.\textsuperscript{48}

In \textit{Yildirim v Austria}, Fatma Yildirim took numerous measures to increase her safety from her physically abusive husband. These measures included: moving out of their apartment, establishing ongoing communication with police, seeking an injunction, and authorizing the prosecution of her husband.\textsuperscript{49} Despite Ms. Yildrim taking these protective steps, the public prosecutor denied police requests to arrest Ms. Yildrim’s husband. The Committee determined that authorities knew, or should have known, that Ms. Yildirim was in extreme danger. By failing to detain Mr. Yildirim the state breached its due diligence obligation to protect Ms. Yildirim.\textsuperscript{50}

In both cases, the Committee noted the state party had “established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counseling for victims of violence and work perpetrators.”\textsuperscript{51} However, the Committee stressed that the realization of these women’s rights required the political will of state actors to satisfy their due diligence obligations. The Committee recommended numerous measures that would address the systemic problems within Austria’s “comprehensive model”.\textsuperscript{52} Recommendations included faster prosecutions of perpetrators of domestic violence, better coordination amongst law enforcement officials and NGOs working with victims of gender-based violence, and strengthening training programs on domestic violence for those officials.\textsuperscript{53}

\textbf{D. Convention Jurisprudence: The Remedy of Compensation}

The remedy of compensation arose in \textit{VPP v Bulgaria}, a case decided by the Committee in 2012.\textsuperscript{54} This case involved a seven-year-old girl who was sexually assaulted by a man in her neighbourhood. The perpetrator was given a suspended sentence through a plea-bargain agreement, but the agreement “did not award compensation for the pain and suffering suffered

\begin{footnotes}
\item[45] Ibid.
\item[46] Goekce v Austria, supra note 44 at para 12.1.3.
\item[47] Ibid.
\item[48] Ibid at para 12.1.4.
\item[49] Yildirim v Austria, supra note 44 at para 12.1.3.
\item[50] Ibid at paras 12.1.5-12.1.6.
\item[51] Ibid at para 12.1.2; Goekce v Austria, supra note 44 at para 12.1.2.
\item[52] Byrnes & Bath, supra note 40 at 525.
\item[53] Goekce v Austria, supra note 44 at paras 12.3 (b)-(d); Yildirim v Austria, supra note 44 at paras 12.3 (b)-(d).
\end{footnotes}
by the victim". The Committee recalled the obligation to provide compensation in General Recommendation No 19, and found the victim had not received adequate monetary compensation. They also found the state party's legal mechanisms inadequate to ensure that she would receive compensation. The Committee recommended the state party provide reparation to the victim. The Committee also held,

[Article 15 of the Convention embodies the principle of equality before the law, and that under this article, the Convention seeks to protect women’s status before the law, be it as a claimant, a witness or a victim, and that the above includes the right to adequate compensation in cases of violence including sexual violence.]

The inclusion of “witness” is relevant to families of missing and murdered Aboriginal women who may seek compensation in Canada on the victim’s behalf.

In arriving at their conclusion, the Committee considered state obligations with respect to gender-based violence. The Committee emphasized that “[s]tate parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.” The Committee also referred to the due diligence obligation in article 2(e) of the Convention, whereby state parties can be found responsible for private acts of violence, if they fail to prevent, investigate, and punish those acts.

E. The UN Declaration on the Rights of Indigenous Peoples

The Declaration was adopted by the UN General Assembly on September 13, 2007. The draft process involved UN agencies, as well as Aboriginal peoples. The Declaration was adopted with 144 states voting in favour, and four states—including Canada—voting against. However, on November 12, 2010, Canada endorsed the Declaration. While the Declaration is non-binding, “there is an expectation that Canada, and all other States, will work to ensure that our laws and policies uphold the rights set out in the UN Declaration”. Further, Canadian courts may look to such declarations when interpreting human rights.

Article 22(2) of the Declaration provides that, “[s]tates shall 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.” It follows that states should work in concert with Aboriginal peoples, rather than unilaterally, to ensure full

55 Ibid at para 9.2.
56 Ibid at para 9.9.
57 Ibid at para 10(1).
58 Ibid at para 9.11.
59 Ibid at para 9.3.
60 Ibid.
61 Declaration, supra note 29.
62 Indigenous Bar Association & University of Manitoba, Faculty of Law, Understanding and Implementing the UN Declaration of Rights of Indigenous Peoples: An Introductory Handbook by Brenda Gun (Indigenous Bar Association & University of Manitoba, Faculty of Law, 2011) at 6, online: IBA <www.indigenousbar.ca/pdf/undrip_handbook.pdf>.
63 Ibid at 7.
64 Paul Joffe, “Canada’s Opposition to the UN Declaration: Legitimate Concerns or Ideological Bias?” in Jackie Hartley, Paul Joffe & Jennifer Preston, eds, Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope and Action, eds (Saskatoon: Purich Publishing, 2010) 70 at 86.
65 Supra note 61, art 22(2).
protection against violence and discrimination. This provision also draws a nexus between violence and discrimination, expanding the purview of the Declaration. Amnesty International considers this connection crucial to understanding the issue of missing and murdered Aboriginal women.66

This section has explored the various international commitments, such as the ICCPR, the Convention, and the Declaration that are invoked in the protection of Aboriginal women from violence. These are commitments that Canada has attached its name to, and that Canada is currently failing to uphold. States can be held accountable for failure to fulfill these obligations, as the cases of Goekce v Austria, Yildirim v Austria, and VPP v Bulgaria demonstrate. In the next section, I discuss reports documenting Canada’s neglect of the issue of missing and murdered Aboriginal women, and further develop the extent of Canada’s failure to fulfill its international obligations.

PART III: REPORTS, RECOMMENDATIONS, AND RESPONSES

This section provides a timeline of reports and recommendations made by various organizations, committees, and international human rights bodies, on the topic of missing and murdered Canadian Aboriginal women. This includes an examination of the Canadian government’s response, and the positive steps the government has taken. However, a number of recent reports and recommendations show that the government’s reforms are inadequate. Greater concerted measures, such as a national inquiry, are required.

The release in 2004 of Amnesty International’s report and the launch of NWAC’s five-year research initiative, Sisters in Spirit, placed an international spotlight on missing and murdered Aboriginal women in Canada. In October 2005, the Human Rights Committee adopted its Concluding Observations in the fifth periodic report on Canada’s commitment to the ICCPR. The Human Rights Committee recommended:

The State party should gather accurate statistical data throughout the country on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system. The State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations.67

Similar recommendations were echoed by others. In November, 2008, the Committee recommended that Canada “examine the reasons for the failure to investigate the cases of missing or murdered aboriginal women and take steps to remedy the deficiencies in the system.”68 The Committee called on Canada to urgently and thoroughly investigate pending cases.69 In September, 2009, Amnesty International released a follow-up to their 2004 report, criticizing the government’s failure to develop a national action plan. A national action plan is a

66 Amnesty International, Stolen Sisters, supra note 18 at 2.
69 Ibid.
measure that Aboriginal women, and a number of human rights bodies, have recommended.  

The Canadian government has taken some measures to address the matter. In 2010, when the *Sisters in Spirit* initiative ended, so did the funding for the database. But the Ministry of Status of Women Canada funded two new NWAC initiatives, which allowed the organization to shift its focus from research to action. In the first project, a six-month initiative called *Evidence to Action I*, Status of Women Canada provided $500,000 to “strengthen the ability of Aboriginal women and girls across Canada to recognize and respond to issues of gender-based violence within their families and communities”. The second project, *Evidence to Action II*, involved $1,890,844 over a three-year period, from February 2011 to April 2014. This initiative aimed to “strengthen the ability of communities, governments, educators (including the Canadian Police College, post-secondary institutions as well as elementary and high schools) and service providers to address the root causes of violence against Aboriginal women and girls.” It is not yet clear if this initiative has been successful.

Aside from the Ministry of Status of Women Canada funding, the federal government’s 2010 budget allocated $10 million to the Department of Justice Canada, over a two-year period. Rona Ambrose, Minister of Public Works and Government Services and Minister for Status of Women, announced that funding would be used “to address the disturbingly high number of missing and murdered Aboriginal women and to make our communities safer.” The plan involved seven steps, including $4 million for a National Police Support Centre for Missing Persons and related initiatives; $2.15 million for the Department of Justice’s Victims Fund to help Western provinces develop victims services for Aboriginal peoples; and $500,000 for the development of a national compendium of law enforcement practices to help Aboriginal communities improve the safety of women.

These resource commitments are important first steps. In January 2013, the RCMP launched the National Public Website for Missing Persons and Unidentified Remains, which identifies data such as the victim’s race. In addition to the website, a new RCMP database is expected to launch in 2014, and “will allow officers to upload more detailed cultural information about victims”. The compendium of practices was posted on the Department of Justice

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71 Standing Committee, *supra* note 17 at 11.

72 *Ibid* at 11-12.

73 *Ibid* at 12.


The practices fall under categories such as “social conditions” and “economic circumstances”; these practices are crucial in addressing root causes of violence against Aboriginal women. However, the compendium provides scant attention to specific steps police and law enforcement officials should take, and agencies are under no obligation to implement these practices.

The Canadian government also funded a Parliamentary Standing Committee on the Status of Women (the “Standing Committee”) to study violence against Aboriginal women and girls. The Standing Committee’s report, released in 2011, contains a detailed overview of the causes of missing and murdered Aboriginal women, reflecting the wide range of witnesses that were heard throughout the study. However, as the report explains, the Standing Committee opted to “shift its focus from the aftermath of the violence to empowering young Aboriginal girls and women.”

While focusing on empowerment is important, this only represents a part of the solution and obscures state obligations. Consequently, the Standing Committee’s recommendations regarding missing and murdered Aboriginal women were weak. The Standing Committee’s recommendations included: increased collaboration between the federal government and NWAC to share information with the RCMP Support Centre for Missing Persons; improving support services for families of victims; and, continued collaboration between the federal government and provincial and territorial partners, to improve existing service models, and better address the needs of Aboriginal victims of violence.

No mention was made of the need for better investigations, racial data collection, or consistent police protocols on missing or murdered Aboriginal women. The New Democratic Party (“NDP”) and the Liberal Party of Canada expressed dissatisfaction with the Standing Committee’s recommendations. The NDP called for a coordinated approach to address the underlying causes of violence against Aboriginal women, and the Liberal Party of Canada called for “a full public investigation into the circumstances surrounding the murdered and missing Aboriginal women and girls.”

A committee of federal, provincial, and territorial Deputy Ministers responsible for justice (the “FPT Committee”) released their own report on the incidence of missing and murdered women in 2012. The report included, but was not limited to, Aboriginal women. The FPT Committee convened in June 2006 “to consider the effective identification, investigation, and prosecution of cases involving serial killers who target persons living a high-risk lifestyle, including but not limited to the sex trade.”

The recommendations of the FPT Committee were more concrete and actionable than those of the Standing Committee. For example, the FPT Committee report acknowledged that police policies and procedures for cases of missing persons varied widely, and a consistent approach was required. The FPT Committee report also recommended the Canadian

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80 Standing Committee, *supra* note 17 at 1.
81 *Ibid* at 43-44.
82 *Ibid* at 60, 67.
84 *Ibid* at 11.
Association of Chiefs of Police “consider a national strategy to ensure consistency in reporting mechanisms for reporting missing persons. This could be developed in conjunction with implementation of a national database.”

The FPT Committee further proposed measures to increase reporting of disappearances of marginalized women, including better communication between police and families of missing persons.

In her 2012 report, Rashdia Manjoo, the UN Special Rapporteur on Violence against Women, highlighted the ongoing concern of missing and murdered Aboriginal women. In her report, Manjoo explicitly mentions “the failure of police to protect aboriginal women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered”.

In November 2012, another Canadian report emerged: Forsaken: The Report of the Missing Women Commission of Inquiry. In this report, Commissioner Wally Oppal concluded that “police investigations into missing and murdered women were blatant failures” due in part to “recurring patterns of error that went unchecked and uncorrected for several years.” The report made sixty-three recommendations, including measures to improve missing person policies and practices, enhance police investigations, and strengthen multi-jurisdictional policing. While the report was criticized for not including input from the Aboriginal community, and failed to specifically mention Aboriginal women, the findings remain applicable to the issue of missing and murdered Aboriginal women.

Starting in December 2012, Aboriginal peoples across Canada made their voices heard during the Idle No More grassroots movement. On January 11, 2013, Aboriginal leaders met with Prime Minister Stephen Harper. During this meeting, Shawn A-in-Chut Atleo, National Chief of the Assembly of First Nations, requested seven specific actions from the federal government. One request was a national inquiry on violence against Aboriginal women, with a special focus on missing and murdered Aboriginal women.

In February 2013, Human Rights Watch released a report on abusive policing and failures to protect Aboriginal women in Northern British Columbia. Not only did Human Rights Watch examine police failures to protect Aboriginal women from disappearance and murder, the HRW Report also highlighted incidents where police had physically or sexually abused Aboriginal women. The HRW Report made several recommendations, including: establish a national commission of inquiry before the end of 2013; develop a national action plan with leadership from Aboriginal communities; and, ratify the American Convention on Human Rights and the Convention of Belém do Pará. The HRW Report also recommended the RCMP “[c]ollect and
make publicly available (as ethically appropriate) accurate and comprehensive, disaggregated data that includes an ethnicity variable on violence against indigenous women and girls”.  

Shortly after the HRW Report was released, opposition members in Parliament demanded Prime Minister Harper establish a national inquiry. Prime Minister Harper responded stating, “[i]f Human Rights Watch, the Liberal party, or anyone else is aware of serious allegations involving criminal activity, they should give that information to the appropriate police so they can investigate it. Just get on and do it.”96 This response shows a lack of comprehension, or an unwillingness to acknowledge that inept investigations into the death or disappearance of Aboriginal women are the crux of the issue.

Pressure on the Canadian government to deal with this matter is only increasing. In June 2013, NWAC and the Canadian Feminist Alliance for International Action (“FAFIA”) presented a report to the Committee as an update on the situation. The organizations indicated the incidence of murder and disappearance of Aboriginal women had risen to 668.97 The report also highlights the encouraging fact that Canada had agreed to visits by the Committee, the Inter-American Commission on Human Rights, and the UN Special Rapporteur for Indigenous Peoples.

The report further emphasizes Canada’s need for external, expert help. The report explains:

Canada needs the expert, external assistance of the CEDAW [Convention] Committee, the Inter-American Commission on Human Rights, and the Special Rapporteur because it has not yet put in place the programs, protocols, standards, and practices that will meet the nation’s obligation to exercise due diligence to prevent, protect, investigate and remedy violence against Aboriginal women and girls, nor has Canada addressed the root causes of the violence.98

This marks a striking shift from previous reports that made recommendations to Canada directly. Former UN Special Rapporteur on Indigenous Peoples, James Anaya, made an official visit to Canada in October, 2013, to examine the human rights situation of Aboriginal peoples. Anaya made a statement upon the conclusion of his visit, outlining his major findings. He recognized the measures taken by the federal and provincial governments to address the issue of murdered and missing Aboriginal women. However, Anaya remarked,

[I]n all of the places I have visited, I have heard from aboriginal peoples a widespread lack of confidence in the effectiveness of those measures. I have heard a consistent call for a national level inquiry…I concur that a comprehensive and nation-wide inquiry into the issue could help ensure a coordinated response.99

Overall, the reports and recommendations outlined above echo Anaya’s statement. Canada has taken some measures to address the matter of missing and murdered Aboriginal women in Canada, but these measures are insufficient, and do not target the most important areas

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95 Ibid at 16.
96 House of Commons Debates, 41st Parl, 1st Sess, Vol 146, No 210 (13 February 2013) at 14080 (Hon Andrew Scheer)
97 Report to CEDAW, supra note 90 at 7.
98 Ibid.
that need reform. Today, NWAC is still pushing for urgent action. On February 13, 2014, NWAC presented a petition to the federal government, with over 23,000 signatures, calling for a national inquiry.\textsuperscript{100} It remains to be seen how the Canadian government responds, as international and domestic pressure continues to mount.

\textbf{PART IV: RIGHTS VIOLATIONS AND DOMESTIC REMEDIES}

Considering international human rights law, and the many reports detailing Canada's failure to remedy the problem of missing and murdered Aboriginal women, it is clear that Canada is in breach of a number of its international human rights obligations.

Canada is not meeting its obligations pursuant to the \textit{ICCPR}. Canada is not ensuring and respecting the recognition of Aboriginal women's right to life, liberty, and security of the person,\textsuperscript{101} without distinction as to race or sex.\textsuperscript{102} Canada is not exercising due diligence, which may be considered a component of article 2 of the \textit{ICCPR};\textsuperscript{103} the country has not enacted specific measure to prevent disappearances, despite the Human Rights Committee’s urging. Canada is insufficiently preventing, punishing, investigating, and redressing the harm committed by private persons against Aboriginal women.\textsuperscript{104} Canada’s poor investigation record of incidents of death or disappearance also suggests the country has not provided effective remedies to the victims.\textsuperscript{105}

Pursuant to the \textit{Convention}, Canada is in breach of its two-pronged discrimination obligation.\textsuperscript{106} According to the Committee, discrimination includes gender-based violence.\textsuperscript{107} This two-pronged obligation involves: first, ensuring that public authorities and institutions condemn discrimination, and second, eliminating discrimination by private persons. This second prong is considered the due diligence obligation.\textsuperscript{108} Further, Canada has not provided effective remedies or compensation to victims or their families.\textsuperscript{109}

Finally, Canada’s policies do not uphold article 22(2) of the \textit{Declaration}, which provides that Canada will work in conjunction with Aboriginal peoples to protect Aboriginal women against violence and discrimination.\textsuperscript{110} Families of victims have encountered difficulty working with police due conflicts in jurisdiction, police stereotyping, and incompetent investigation practices.\textsuperscript{111}

Canada needs effective criminal investigations of disappearances and deaths of Aboriginal women. A set of systemic measures, such as those recommended in \textit{Goekce v Austria} and \textit{Yildirim v Austria}, would be helpful in Canada. Canada, like Austria, already has a comprehensive model in place to deal with violent crimes. However, failures lie in the function


\textsuperscript{101} \textit{ICCPR}, supra note 28, arts 6, 9.

\textsuperscript{102} \textit{Ibid}, art 2.

\textsuperscript{103} \textit{General Comment No 31}, supra note 33.

\textsuperscript{104} \textit{Ibid}.

\textsuperscript{105} \textit{ICCPR}, supra note 28, art 2(3).

\textsuperscript{106} \textit{Convention}, supra note 28, arts 2(d)-(e).

\textsuperscript{107} \textit{General Recommendation No 19}, supra note 37.

\textsuperscript{108} \textit{Convention}, supra note 28, arts 2(d)-(e).

\textsuperscript{109} \textit{General Recommendation No 19}, supra note 37. See also “Convention Jurisprudence: The Remedy of Compensation”, above.

\textsuperscript{110} \textit{Supra} note 61, art 22(2).

\textsuperscript{111} Amnesty International, \textit{Stolen Sisters}, supra note 18 at 18.
of our police services. Functional improvements to police services may include the following four recommendations. First, create a nation-wide uniform protocol for police forces that includes the collection of racial data of victims. Second, increase collaboration between police and NGOs to identify and solve cases of violence against Aboriginal women. Third, resolve jurisdictional conflicts between police forces. Fourth, improve training of police officers to enhance understanding of the causes of violence against Aboriginal women. In tackling systemic problems at a functional level, police services will be better able to deal with current cases and prevent future incidents.

Canada must also improve compensation for victim’s families. According to recent statistics, 440 children have been left without mothers.\(^{112}\) Government-backed reforms may include establishing a compensation fund for the children of victims, as recommended in the Missing Women Commission of Inquiry report.\(^{113}\)

Crafting solutions to these issues on a national scale is a complex task. Therefore, a well-funded national inquiry is needed to carefully research the matter. Aboriginal peoples and organizations, the UN Special Rapporteur on Indigenous Peoples, international human rights bodies, and NGOs have voiced approval for such a measure.\(^{114}\) The inquiry must include participation of Aboriginal organizations and peoples. The inquiry must have a reactive and a preventative focus—to deal with current cases, and to prevent future ones. The inquiry must address the root causes of violence and discrimination against Aboriginal women. To the extent that Canada is in need of international, expert assistance, a number of international bodies are prepared to offer their guidance.\(^{115}\) Canada should make use of this guidance, as the time has come for strong and decisive action.

Implementing systemic measures, providing compensation, and conducting a national inquiry has significant resource implications. However, spending resources to prevent and investigate missing and murdered Aboriginal women should not be an either-or proposition. This matter demands resources, and it is the Canadian government’s responsibility to ensure adequate funds are allocated. In the long-term, an improved, effective system will save lives.

**CONCLUSION**

Currently, there are at least 668 cases of missing and murdered Aboriginal women.\(^{116}\) This tragedy has unfolded over the past decades, yet little progress has been made. The striking statistics explored in Part I demonstrate the urgency of the issue, and the contributing role that police play. Part II illustrates how Canada is in violation of many international human rights obligations. In Part III, this paper explores reports and recommendations related to missing and murdered Aboriginal women. These reports and recommendations speak to the urgency of solving this national problem; the Canadian government has taken inadequate steps, and ultimately failed, in protecting Aboriginal women’s human rights. Part IV provides recommendations on next steps and shows the immediate, positive measures Canada can take.

Despite current failures, the next steps are clear. A national inquiry is needed to ensure a

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\(^{112}\) Native Women’s Association of Canada, *supra* note 4 at 34.

\(^{113}\) Missing Women Commission of Inquiry, *supra* note 88 at 115.

\(^{114}\) See Part III: Reports, Recommendations, and Responses, *above*.

\(^{115}\) Ibid.

coordinated, nation-wide response to the high rate of missing and murdered Aboriginal women. A national inquiry will identify the measures required to improve our current system. These measures could address meaningful compensation for families of the victims, effective criminal investigations, and collaboration between NGOs and police forces. It is time the Canadian government confront the longstanding problem of missing and murdered Aboriginal women. Work is needed, and there is no time to waste.