

Gender-Motivated Killings of Aboriginal Women and Girls Canada

Sharon McIvor and Shelagh Day*

Prepared for UN Expert Group Meeting on Gender-motivated killings of
women

12 October 2011

Aboriginal women and girls experience extremely high levels of violence in Canada. In its submission to the CEDAW Committee in 2009, the Native Women's Association of Canada stated that: "Violence against Aboriginal women and girls is a national tragedy that requires immediate, widespread action."¹ Aboriginal women in Canada report rates of violence, including domestic violence and sexual assault, 3.5 times higher than non-Aboriginal women.² Young Aboriginal women are five times more likely than other Canadian women of the same age to die of violence.³ Aboriginal women and girls experience both high levels of sexual abuse and violence in their own families and communities, and high levels of stranger violence in the broader society.⁴

Sisters In Spirit (SIS), a research and data-collection project initiated by the Native Women's Association of Canada (NWAC), has produced two ground-breaking reports that document the disappearances or murders of Aboriginal women and girls over twenty years.⁵ NWAC reports:

As of March 31, 2010, NWAC has recorded information for 582 cases. Of the 582 cases, 115 (20%) involve missing women and girls, 393 (67%) involve women or girls who died as the result of homicide or negligence, and 21 cases (4%) fall under the category of suspicious death (incidents that police have declared natural or accidental but that family or community members regard as suspicious). There are 53 cases (9%) where the nature of the case remains unknown, meaning it is unclear whether the woman was murdered, is missing or died in suspicious circumstances.⁶

NWAC reports further:

¹ Native Women's Association of Canada and Assembly of First Nations, Statement regarding Canada's report to the United Nations Committee on the Elimination of Discrimination Against Women, November 2009. Reference to this statement can be found online at: <http://64.26.129.156/article.asp?id=133>

² Violence against Aboriginal women and girls is well-documented in Canada. See Jodi-Anne Brzozowski, Andrea Taylor-Butts and Sara Johnson, "Victimization and offending among the Aboriginal population in Canada", *Juristat*. Vol. 26, no. 3, Canadian Centre for Justice Statistics, 2006. Online at: <http://dsp-psd.tpsgc.gc.ca/Collection-R/Statcan/85-002-XIE/85-002-XIE2006003.pdf>

³ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Aboriginal Women*, September 2009, at 1. Online at: <http://www.amnesty.org/en/library/info/AMR20/012/2009/en>

⁴ See Brzozowski, *supra* note 2.

⁵ Native Women's Association of Canada, *Voices of Our Sisters In Spirit: A Report to Families and Communities*, 2nd Edition, March 2009 at 96, online at: http://www.nwac.ca/sites/default/files/download/admin/NWAC_VoicesofOurSistersInSpiritII_March2009_FINAL.pdf; *What Their Stories Tell Us: Research findings from the Sisters In Spirit initiative*, March 2010, online at: http://www.nwac.ca/sites/default/files/imce/2010_NWAC_SIS_Report_EN.pdf. Since the publication of the 2010 report, more missing and murdered Aboriginal women and girls have been added to the SIS database and the number is now over 600.

⁶ *What Their Stories Tell Us* at 18.

Between 2000 and 2008, 153 cases of murder have been identified in NWAC's Sisters In Spirit database. These women represent approximately ten per cent of the total number of female homicides in Canada despite the fact that Aboriginal women make up only three per cent of the total female population in Canada. The majority of women and girls in NWAC's database were murdered, while **115 women and girls are still missing**.

The majority of disappearances and deaths of Aboriginal women and girls **occurred in the western provinces** of Canada. Over two thirds of the cases were in British Columbia, Alberta, Manitoba, and Saskatchewan.

A great majority of the women were young. More than half of the women and girls were **under the age of 31**. Measures designed to increase safety must take into account the needs of young Aboriginal women and girls.

Many of the **women were mothers**. Of the cases where this information is known, 88 per cent of missing and murdered women and girls **left behind children and grandchildren**. These children must have access to culturally appropriate supports to deal with this trauma.

Aboriginal women and girls are as likely to be killed by an acquaintance or stranger as they are by an intimate partner. Almost **17 per cent of those charged were strangers**. Aboriginal women and girls are more likely to be killed by a stranger than non-Aboriginal women.

Nearly **half of murder cases remain unsolved**. Nationally, 53 per cent of murder cases have been cleared by charges of homicide, while no charges have been laid in forty per cent of cases. However, **there are differences in clearance rates by province**. The clearance rate for murdered women and girls ranges from a low 42 per cent in Alberta to 93 per cent in Nunavut.

The majority of **cases occurred in urban areas**. 70 per cent of women and girls disappeared from an urban area, and 60 per cent were murdered in an urban area. But **resources are also needed** to respond to the needs of families in rural and on-reserve communities.⁷

NWAC believes that the scope of the violence is far greater than these documented cases. It refers to the cases in its database as the "known cases" of missing and murdered Aboriginal women and girls. Walk 4 Justice, which has carried out a walk across Canada each summer for the last five years to talk with Aboriginal families and communities about missing women, believes that there are many more cases of missing and murdered Aboriginal women and girls that have gone undocumented

⁷ *What Their Stories Tell Us* at ii.

by police or media.⁸ Most Aboriginal and human rights organizations agree that the count of missing and murdered Aboriginal women and girls is likely much higher.

Two facets of this problem have been identified by Aboriginal women, families, and non-governmental organizations, including the Native Women's Association of Canada, Amnesty International,⁹ and the Canadian Feminist Alliance for International Action. These two facets are:

- the failure of police to protect Aboriginal women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered; and
- the disadvantaged social and economic conditions in which Aboriginal women and girls live, which make them vulnerable to violence and unable to escape from it.¹⁰

Both of these issues have been highlighted by United Nations treaty bodies after reviews of Canada, including the Committee on Economic, Social and Cultural Rights in 2006,¹¹ and the Committee on the Elimination of Racial Discrimination in 2007.¹² During the Universal Periodic Review of Canada in 2009 by the Human Rights Council, recommendations were made to Canada regarding violence against women, and against indigenous women in particular.¹³ Canada accepted the underlying principles in these recommendations, which included recommendations that Canada remedy police failures to deal with violent crimes against Aboriginal women and girls, and that Canada address the low socio-economic status of Aboriginal women and girls as a factor that contributes to the violence against them.

⁸ See, for example: The Hook, "Walk 4 Justice demands answers to missing women cases", online at: <http://theyee.ca/Blogs/TheHook/Aboriginal-Affairs/2009/06/05/Walk4JusticeMissingWomenCases>

⁹ See Amnesty International, *Stolen Sisters: A Human Rights Response To Discrimination and Violence Against Indigenous Women in Canada*, online at: <http://www.amnesty.ca/stolensisters/amr2000304.pdf>

¹⁰ The most up to date statistics on Aboriginal women in Canada can be found in Statistics Canada, Vivian O'Donnell and Susan Wallace, *First Nations, Metis and Inuit Women*, July 2011, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>

¹¹ Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006) at paras. 11(d), 15, 26, online at: <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.CAN.CO.4,%20E.C.12.CAN.CO.5.En?Opencument>.

¹² Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc.CERD/C/CAN/CO/18 (25 May 2007) at paras. 20 – 21, online at: <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>.

¹³ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/11/17, 5 October 2009 at paras. 33 – 38, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/152/99/PDF/G0915299.pdf?OpenElement>. See also Report of the 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, 8 June 2009, at para. 46, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/49/PDF/G0913949.pdf?OpenElement>

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

31. Although the Committee notes that a working group has been established to review the situation relating to missing and murdered women in the State party and those at risk in that context, it remains concerned that hundreds of cases involving Aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished.

32. The Committee urges the State party to examine the reasons for the failure to investigate the cases of missing or murdered Aboriginal women and to take the necessary steps to remedy the deficiencies in the system. The Committee calls upon the State party to urgently carry out thorough investigations of the cases of Aboriginal women who have gone missing or been murdered in recent decades. It also urges the State party to carry out an analysis of those cases in order to determine whether there is a racialized pattern to the disappearances and take measures to address the problem if that is the case.¹⁴

At the same time, the CEDAW Committee recommended that Canada "develop a specific and integrated plan for addressing the particular conditions affecting aboriginal women, both on and off reserves, ...including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence..."¹⁵

Canada was asked to report back on its actions on the recommendation contained in paragraph 32 in one year, and it did so in 2009. The Canadian Feminist Alliance for International Action (FAFIA), the B.C. CEDAW Group and Amnesty International provided alternative follow-up reports indicating that Canada had taken no adequate action.¹⁶

¹⁴ UN Committee on the Elimination of Discrimination against Women, CEDAW/C/CAN/CO/7, 7 November 2008, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/602/42/PDF/N0860242.pdf?OpenElement>

¹⁵ Ibid. at para. 44.

¹⁶ Canadian Feminist Alliance for International Action, *No Action, No Progress: FAFIA's Report on Canada's Progress in Implementing Priority Recommendations made by the CEDAW Committee in 2008*, February 2010, online at: http://www.fafia-afai.org/files/Report.%20No%20Action%20No%20Progress.%20FAFIA.%202010_2.pdf; B.C. CEDAW Group, *Nothing to Report*, A Report on Progress in Implementing Priority Recommendations made by the CEDAW Committee in its 2008 Concluding Observations on Canada, January 2010, online at: <http://povertyandhumanrights.org/wp-content/uploads/2010/04/nothing-to-report.pdf>; Amnesty International, *Canada: Follow Up To Concluding Observations of the United Nations Committee on the Elimination of Discrimination against Women*, online at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI_CanadaFU.pdf

In its 2009 follow-up report on the CEDAW Committee's priority recommendations Amnesty International stated that a national, co-ordinated police response is needed, which includes:

- 1) Instruction to police to consistently record whether or not the victims of violence are Aboriginal and enter this information in the two national police information systems
- 2) Review of all long term missing persons cases to determine how many are Aboriginal and whether they have been adequately investigated as potentially serious crimes
- 3) Creation of a national database or clearinghouse for missing persons cases to ensure effective sharing of information across jurisdictions and between police and relevant service organizations
- 4) Creation of effective police protocols for response to missing persons cases that acknowledges and reflects the specific risks to Aboriginal women
- 5) Increased specialized resources in all police jurisdictions to investigate missing persons cases and ensure effective coordination among all police forces
- 6) Meaningful incorporation of issues of violence against Indigenous women in police training, including in training scenarios.

In addition, all groups reported that the disadvantaged conditions of Aboriginal women and girls have not been adequately or concertedly addressed by governments in Canada, and that this amounts to an ongoing failure to prevent the violence and remedy it.

Since Canada's report back, the CEDAW Committee has sent Canada two follow-up letters. It has asked for a further report on actions to address missing and murdered Aboriginal women and girls by 15 January 2012.¹⁷

Despite years of lobbying by many diverse non-governmental organizations, the Government of Canada, along with the provincial and territorial governments, have still not put in place a comprehensive and effective national action plan for addressing the root causes and consequences of the violence against Aboriginal women and girls. Nor is there a comprehensive plan for improving and co-ordinating the capacity of the police, and the justice system, to protect Aboriginal women and girls, or to respond adequately to the violence when it occurs. The Government of Canada has not publicly acknowledged that there are grave and systematic violations of the human rights of Aboriginal women and girls occurring in Canada, nor has it acknowledged publicly its obligation to exercise due diligence

¹⁷ Letter to Canada, 25 August 2010, online at: <http://www2.ohchr.org/english/bodies/cedaw/docs/followup/Canada.pdf>; Letter to Canada, 10 February 2011, online at: <http://www2.ohchr.org/english/bodies/cedaw/docs/followup/Canada10022011.pdf>

to prevent, investigate and remedy the violence and to ensure that the rights of Aboriginal women and girls to life, to equal protection and benefit of the law, and to equality in social and economic conditions are fully realized.

Clusters of Killings

The Native Women's Association of Canada's 2009 and 2010 reports show that there are disappearances and murders of Aboriginal women and girls across Canada, with more documented disappearances and murders in the Western provinces. However, there are also some clusters of killings, particularly in British Columbia.

Since the early 90s, over 60 women have gone missing from Vancouver's Downtown Eastside. The Vancouver Police and RCMP did not get involved until 1999, by which time many women had been reported missing. Police and city officials long denied that there was any pattern to the disappearances or that women in the area were in any particular danger.

In 2002 and 2003, Robert William Pickton was charged with first-degree murder in the deaths of 26 of the women missing from Vancouver's Downtown Eastside. In December 2007, Pickton was convicted of second-degree murder on six counts. Proceedings on the other counts were stayed.

Not all of the disappeared and murdered women from Vancouver's Downtown East Side were Aboriginal, but a disproportionate number were.

The RCMP have documented the disappearances and murders of 18 women over the last decade in the vicinity of Highway 16, which runs from Manitoba to the Pacific Ocean through Northern B.C. First Nations in the area say there are 40 disappearances and murders, and most of them are Aboriginal women and girls. The B.C. section of this remote highway is now known as the "Highway of Tears".

There is a string of Aboriginal communities along this road, and no public transport. Aboriginal women and girls who hitchhike to school, or from community to community to visit friends, disappear or are murdered. In 2006 a community forum recommended regular bus service for Highway 16 but that recommendation has not been implemented.

Impunity

There is a long history of racist treatment of Aboriginal people by police and the justice system in Canada. Amnesty International wrote in 2004:¹⁸

¹⁸ *Stolen Sisters* at 29 – 33.

Across the country, Indigenous people face arrest and criminal prosecution in numbers far out of proportion to the size of the Indigenous population. The Manitoba Justice Inquiry suggested that the over representation of Indigenous people in the justice system may partly stem from the predisposition of police to charge and detain Indigenous people in circumstances “when a white person in the same circumstances might not be arrested at all, or might not be held.”¹⁹

The Inquiry explained that many police have come to view Indigenous people not as a community deserving protection, but a community from which the rest of society must be protected. This has led to a situation often described as one of Indigenous people being “over-policed” but “underprotected.”

Regarding missing and murdered Aboriginal women and girls, Amnesty International states that Canadian police and public officials have long been aware of a pattern of racist violence against Aboriginal women – but have done little to prevent it.²⁰ Evidence of the failures of police to protect Aboriginal women and girls from violence appears in the many reports of family members who have been treated dismissively by police officers. NWAC wrote in its 2009 report that “[t]he evidence indicates the majority of families report multiple issues and problems with the justice system’s response to the disappearance or murder of their loved one. NWAC has heard on many occasions that the families experienced a lack of responsiveness, disrespect, confusing or incorrect information, poor adherence to policies and protocols and an overall discounting of family information from police service personnel.”²¹ Many family members have been brushed off with justifications that blamed the women, such as, “she has a high-risk life style.” Many of the cases did not receive timely or thorough investigation.²² Profiles of individual women who disappeared or were murdered also reveal that if cases went to court, the perpetrators of violence against Aboriginal women and girls often were not punished, or were punished minimally.²³ Justice for Girls reported in 2005 that Aboriginal girls are targeted by violent men because of their vulnerability, and, in particular, because of the vulnerability created by the lack of response of the police and courts to violence against them.²⁴

¹⁹ Report of the Aboriginal Justice Inquiry of Manitoba, November 1999, online at: <http://www.ajic.mb.ca/volume.html>

²⁰ Amnesty International, *Stolen Sisters, Overview*. Online at: http://www.amnesty.ca/campaigns/sisters_overview.php

²¹ *Voices of Our Sisters In Spirit* at 96.

²² *Stolen Sisters 2004* at 2 and 23 – 33.

²³ Amnesty International, *Stolen Sisters: Profiles of violence and discrimination against Indigenous women in Canada*, online at: http://www.amnesty.ca/campaigns/sisters_gallery_intro.php

²⁴ Kelly A. MacDonald, Justice for Girls, *Justice System’s Response: Violence against Aboriginal Girls*, submitted to: Honourable Wally Oppal, Attorney General of British Columbia, September 2005, at 12,

Beverly Jacobs, the President of the Native Women's Association of Canada in 2009, said "it's as if society is prepared to disregard the missing women as 'garbage.'"²⁵

Willful neglect and disregard on the part of the police and justice system are the current manifestations of the history of colonization in Canada. As NWAC writes:

To address the issue of violence, one must understand the history and impact of colonization on Aboriginal peoples in Canada. It is the ongoing narration of violence, systemic racism and discrimination, purposeful denial of culture, language and traditions, and legislation designed to destroy identity that has led to the realities facing Aboriginal peoples. [NWAC research begins] with an explanation of how colonization is not simply a strategy of the past, but a reality that reinforces the silence surrounding the violence experienced by First Nations, Inuit, and Métis women today. It is this foundation of knowledge that answers the questions of "why?" and "how?" so many Aboriginal women and girls have gone missing or been found murdered without recognition of government or society.²⁶

2010-2011 Developments

Since the time of the follow-up reports and the UPR recommendations, there have been these developments:

1. 10 Million Dollars – Government of Canada

In the March 2010 Budget, the Government of Canada allocated 10 million dollars to combat violence against Aboriginal women. This amount represents 0.003565% of the 280.5 billion dollars of planned total expenditure for the fiscal year 2010-2011. The Budget stated that the money was being allocated "to address the disturbingly high number of missing and murdered Aboriginal women," and also stated "[c]oncrete actions will be taken so that law enforcement and the Justice system meet the needs of Aboriginal women and their families."²⁷

On October 29, 2010, the Government of Canada announced that the 10 million dollars will be spent over two years as follows:

online at: <http://justiceforgirls.org/publications/pdfs/Violence%20against%20Aboriginal%20Girls%20-%20Final%20Brief%20-%20Sept%202005.pdf?/20040213/newsPink.html>.

²⁵ Winnipeg Free Press, Mia Rabson, "Feds urged to stem tragedies", May 1, 2009, online at: <http://www.winnipegfreepress.com/local/feds-urged-to-stem-tragedies-44125677.html>.

²⁶ *What Their Stories Tell Us* at 1.

²⁷ Government of Canada, March 9, 2010, *Budget 2010, Chapter 3.4 Supporting Families and Communities and Standing Up for Those Who Helped Build Canada*, online at: <http://www.budget.gc.ca/2010/plan/chap3d-eng.html>

1. \$4-million for the Royal Canadian Mounted Police (RCMP) to:
 - establish a National Police Support Centre for Missing Persons, including one resource, linked to National Aboriginal Policing Services, specifically dedicated to the issue of missing and murdered Aboriginal women;
 - enhance the Canadian Police Information Centre (CPIC) to capture additional missing persons data;
 - create a national registry for missing persons and unidentified remains so police have more comprehensive information on missing persons across jurisdictions; and
 - create a national Web site to encourage the public to provide tips and information on missing persons cases and unidentified human remains.
2. \$1 million to support the development of school and community-based pilot projects to help heal, move forward and provide alternatives to high-risk behaviour for young Aboriginal women, including young offenders. The overall goal of the initiative will be to reduce the vulnerability of young Aboriginal women to violence.
3. \$2.15 million to the Department of Justice's Victims Fund to help the western provinces develop or adapt victim services for Aboriginal people and specific culturally sensitive victim services for families of missing and murdered Aboriginal women. These funds will also be made available to Aboriginal community groups to respond to the unique issues faced by the families of missing or murdered Aboriginal women at the community level.
4. \$1.5 million to Public Safety Canada to develop community safety plans to improve the safety of Aboriginal women within Aboriginal communities. Community safety plans will be developed by Aboriginal communities with the support of the Government of Canada to improve community safety and wellness.
5. \$850,000 to the Justice Partnership and Innovation Fund to develop materials for the public on the importance of breaking intergenerational cycles of violence and abuse that threaten Aboriginal communities across Canada. This funding will be made available to Aboriginal organizations and Public Legal Education groups working with Aboriginal groups.
6. \$500,000 for the development of a national compendium of promising practices in the area of law enforcement and the justice system to help Aboriginal communities and groups improve the safety of Aboriginal women across the country. These “best practices” will be identified in a number of fields: law enforcement, victim services, Aboriginal community development and violence reduction.²⁸

²⁸ Government of Canada, October 29, 2010, “Government Of Canada Takes Concrete Action Regarding Missing And Murdered Aboriginal Women”, online at: http://www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32560.html

As the Native Women's Association of Canada has pointed out, the funding in these various envelopes is not in all cases specifically designated to deal with Aboriginal women, or to address serious violence, like murder. Some amounts are allocated so that the Western provinces and community organizations in those provinces (BC, Alberta, Saskatchewan and Manitoba) can access it, and services for Aboriginal women may be included within a more generic project. There is only enough money to support small projects on a short-term basis. The allocation of funds within the 10 million dollars was decided without consultation with NWAC.²⁹

At the same time, the Government of Canada informed NWAC that it would no longer fund Sisters In Spirit. Sisters In Spirit was first funded in 2005 as a five-year research, education and policy initiative through the policy branch of Status of Women Canada and approved by Cabinet. Sisters in Spirit received \$5million dollars over five years. This initial funding ended in March 31, 2010.

As noted above, Sisters In Spirit has collected information about missing and murdered Aboriginal women and girls across Canada, and has constructed an important, reliable database of information. It has published analytical reports, and has been an essential source of information and support for the families of the missing and murdered Aboriginal women and girls. It is widely recognized that through its careful and sensitive research, Sisters In Spirit brought the issue of murdered and missing Aboriginal women to light, and demonstrated that the Government of Canada, as well as provincial and territorial governments, need to take action on this disturbing reality.

When the Budget announcement was made, those involved in Sisters in Spirit, and all of the supporters of its excellent work, were sure that its funding would be renewed. However, the Cabinet did not approve renewed funding for Sisters In Spirit. Instead NWAC received bridge funding of \$500,000 for six months from April to October 2010.

NWAC was then informed that since, under Status of Women's Community Fund, no research, policy development or advocacy can be funded, there will be no further funding for Sisters In Spirit. It appears to be the view of the Government of Canada that there is no need for Sisters in Spirit to continue its research and maintain its database of information on missing and murdered Aboriginal women and girls, because the RCMP has now been funded to collect information. A decision not to fund Sisters In Spirit ignores known facts:

- Sisters in Spirit continues to add more women and new evidence to its database;

²⁹ Native Women's Association of Canada, November 9, 2010, "NWAC responds to \$10M announcement from the Department of Justice Canada", online at http://www.nwac.ca/sites/default/files/imce/Press%20Release_NWAC%20responds%20to%20%2410M_9%20November%202010.pdf

- the RCMP may be limited by policy or expertise from collecting data about Aboriginal identity, and consequently its database will necessarily be inferior to the SIS database;
- it will take several years for an RCMP database to be fully functioning, even if it is adequately funded.

Letters expressing support for continued funding for Sisters In Spirit received responses from the Honourable Rona Ambrose, Minister responsible for the Status of Women, which refer to the allocation of 10 million dollars and assured writers that Status of Women Canada is currently funding a project of the Native Women's Association of Canada, which has been titled "Evidence to Action". The Minister writes: "This project will strengthen the abilities of 500 Aboriginal women and girls across Canada to recognize and respond to issues of gender-based violence within their families and communities. The project will also allow the Native Women's Association of Canada to develop, with the assistance of Status of Women Canada, a longer term initiative within the Women's Program to work in communities to help prevent violence against Aboriginal women."³⁰

The Government of Canada has used funding – the giving, withholding and setting terms for it - as a means of controlling and restricting the activities of non-governmental women's organizations and of NWAC, and the Sisters In Spirit project in particular, because their work has exposed grave and systematic violations of the human rights of Aboriginal women and girls in Canada.

The allocation of 10 million dollars over 2010-2011 is a mere gesture, and can not address the causes and consequences of the violence.

2. Government of Canada, House of Commons, Standing Committee on the Status of Women - Interim Report on Violence against Aboriginal Women – March 2011

The Standing Committee on the Status of Women is a Committee of the House of Commons of the Parliament of Canada. It is composed of Members of Parliament from all parties. The Committee can select issues for study. It can make recommendations and a report to the House of Commons. The Committee can request a response by the Government of Canada within 150 days of a report being made.

The Committee issued an Interim Report on Violence against Aboriginal Women in March 2011. However, because the Committee's report is an interim one, no recommendations have been made, and consequently, the Government of Canada need not respond.

³⁰ Letter to a supporter of Sisters In Spirit from Minister Rona Ambrose, dated December 2, 2010.

The 40th Parliament was prorogued for an election in April, and a new session of Parliament began on June 2, 2011. The House of Commons Standing Committee on the Status of Women has now been reconstituted with new Members of Parliament. The newly composed Committee has not decided whether it will proceed with the study of violence against Aboriginal women.

The Interim Report, released in March 2011, recognized the need for a comprehensive approach to eliminating violence against Aboriginal women and girls.³¹ Between April 2010 and February 2011, the Committee heard from over 150 witnesses from across Canada. The Committee stated:

The Committee understands that it is impossible to deal with violence against Aboriginal women without dealing with all of the other systems which make women vulnerable to violence and make it difficult for them to escape violence. What is required is a co-ordinated, holistic approach to violence against Aboriginal women. The vulnerability of Aboriginal women is not new; it is chronic.

The Standing Committee on the Status of Women endorsed the 2008 observations of the CEDAW Committee in these words:

During its last review of Canada, the UN Committee on the Elimination of Discrimination against Women (CEDAW) made specific recommendations to Canada, about violence against women and about missing and murdered Aboriginal women more particularly. The Committee recognizes that the testimony it received on violence against Aboriginal women reaffirms the findings of the CEDAW Committee that:

Aboriginal women in Canada continue to live in impoverished conditions, which include high rates of poverty, poor health, inadequate housing, lack of access to clean water, low school-completion rates and high rates of violence. They are underrepresented in all areas of the labour market, in particular in senior or decision-making positions, have higher rates of unemployment and face a greater pay gap in terms of their hourly earnings compared with men.

The Committee plans to situate the question of violence within this larger context. As it works toward its final report, the Committee will take into consideration the request of witnesses who called on the federal government

³¹ Parliament of Canada, Standing Committee on the Status of Women, Interim Report, *Call Into the Night: An Overview of Violence against Aboriginal Women*, March 2011, 40th Parliament, 3rd session, online at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3>

to put in place a national action plan, recalling once again that the CEDAW Committee had proposed that Canada:

[D]evelop a specific and integrated plan for addressing the particular conditions affecting Aboriginal women, both on and off reserves,... including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, [and] low income...

The violence experienced by Aboriginal women was most often placed in the context of breakdown in the whole community as a result of the generational impacts of colonization and residential schools, and of the systemic racism that continues to push Aboriginal people to the margins. The Committee heard extensive testimony about the violence that Aboriginal women face at the hands of their families as well as strangers. The Committee heard disturbing evidence of widespread discrimination and racism against Aboriginal people, including with landlords, police and social and health services in a number of cities.

The Standing Committee found that the poverty of Aboriginal women was repeatedly cited by witnesses as a root cause of the violence. The Committee also noted that the lack of adequate affordable housing makes violence difficult to escape, and the ongoing criminalization of Aboriginal women and girls has led to their overrepresentation in Canadian prisons. Aboriginal women now make up one-third of the federal prison population; when they leave prison they are further marginalized by society, and offered little assistance.³²

Aboriginal women who are poor, inadequately housed, have criminal records, are in prostitution, or have addictions are numerous among those who are missing or murdered. Yet, as the Native Women's Association of Canada has reported, and the Standing Committee also noted, police in different jurisdictions have often relied on the social and economic marginalization of Aboriginal women, calling it their "lifestyle", to justify failing to protect them.

While the report of the Standing Committee on the Status of Women is significant because of its insights, we reiterate that it is an interim report, with no recommendations, and it requires no government response. The newly composed Standing Committee may, or may not, continue the study of violence against Aboriginal women and produce a final report. Even if it does, we note that the

³² *Evidence*, Standing Committee on the Status of Women, Kim Pate, Executive Director, Canadian Association of Elizabeth Fry Societies, February 8, 2011. See also Canadian Association of Elizabeth Fry Societies and Native Women's Association of Canada, "Women and the Canadian Legal System: Examining Situations of Hyper-Responsibility" in *Canadian Woman Studies*, Indigenous Women in Canada: The Voices of First Nations, Inuit and Métis Women, Winter/Spring 2008, Volume 26, Numbers 3,4 at 94. See also, Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, December 2003, online at: <http://www.chrc-ccdp.ca/pdf/reports/fswen.pdf>

Conservative federal government has, in the past, responded negatively to most of the recommendations from this Committee.

In the meantime, the Government of Canada, and Ministers from the provinces, express sympathy for Aboriginal women and girls, but refuse to set up a national action plan to address the disappearances and murders.³³

3. Missing Women Commission of Inquiry – British Columbia

On September 27, 2010, the Government of British Columbia established the Missing Women Commission of Inquiry, with the former Attorney General of British Columbia, Wally Oppal, Q.C., as the Commissioner. This is an inquiry into the facts, police investigations and official decisions involved in “the Pickton case”.

Under its terms of reference, the Missing Women Commission of Inquiry will:

- a) inquire into and make findings of fact respecting the conduct of the investigations conducted between January 23, 1997 and February 5, 2002, by police forces in British Columbia respecting women reported missing from the Downtown Eastside of the city of Vancouver;
- b) inquire into and make findings of fact respecting the decision of the Criminal Justice Branch on January 27, 1998, to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement and aggravated assault;
- c) recommend changes considered necessary respecting the initiation and conduct of investigations in British Columbia of missing women and suspected multiple homicides; and
- d) recommend changes considered necessary respecting homicide investigations in British Columbia by more than one investigating organization, including the co-ordination of those investigations.³⁴

Commissioner Oppal’s report will be submitted in 2012.

The Missing Women Commission of Inquiry is not specifically focused on missing and murdered Aboriginal women in British Columbia, but because Aboriginal women were disproportionately represented among the victims of Robert William Pickton, it will address their circumstances and realities in part.

³³ Heather Scoffield, The Canadian Press, News 1130, July 5, 2011, “Ministers sympathize with aboriginal women, but won’t set up action plan”, online at: <http://www.news1130.com/news/national/article/249878--ministers-sympathize-with-aboriginal-women-but-won-t-set-up-task-force>

³⁴ See terms of reference and complete information on the Missing Women Commission of Inquiry at: <http://www.missingwomenInquiry.ca/>

Although the disappearances and murders of women along the Highway of Tears was not originally included within the mandate of the Missing Women Commission of Inquiry, recently the Government of British Columbia agreed to permit the Commissioner to study the disappearances and murders of women along the “Highway of Tears” as well the disappearances and murders of women from the Downtown Eastside. However, there will be no fact-finding with respect to the Highway of Tears disappearances and murders, only “study”. Consequently, no responsibility can be assigned for any police or official failures.

After inviting groups and individuals to apply for standing, the Commissioner granted standing to participate in the Inquiry to 13 groups.³⁵ Some were granted full standing and some were granted limited standing. Those with full standing are permitted to cross-examine all witnesses; those with limited standing can apply to the Commission for permission to cross-examine selected witnesses.

The Commissioner recommended to the Government of British Columbia that funding be provided to the groups based on their level of involvement in the inquiry; thus full participants would receive more funding than limited participants. The Native Women’s Association of Canada was granted full standing, and a coalition of women’s organizations, the Women’s Equality and Security Coalition - which includes members of the Canadian Feminist Alliance for International Action - was granted limited standing.

Despite the Commissioner’s recommendation, on May 19, 2011, the Attorney General of British Columbia released an information bulletin indicating that it would provide funding for one lawyer to represent some of the families of women murdered by Robert William Pickton, but it would not provide funding to any of the other groups granted standing by the Commissioner.³⁶

The Attorney General, in effect, overturned the decision of an independent Commissioner regarding standing since many of the groups are unable to participate in the Inquiry’s fact-finding process unless public funding for legal counsel is provided. The Vancouver Police Department, the Criminal Justice Branch of the Attorney General’s Ministry, and the Royal Canadian Mounted Police - whose conduct is under scrutiny - are all represented by publicly-funded legal counsel. But the groups which have the knowledge to test and examine the evidence of police and official witnesses, through cross-examination, were denied the funds necessary for representation by legal counsel.

³⁵ Missing Women Commission of Inquiry, Ruling on Participation and Funding, May 2, 2011, online at: <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

³⁶ Attorney General, British Columbia, “Families to receive funding for Inquiry participation,” May 19, 2011, online at: <http://www.newsroom.gov.bc.ca/2011/05/families-to-receive-funding-for-inquiry-participation.html>

On June 27, 2011 the Commissioner invited the groups to whom standing had been granted to explain the impact of the government's decision not to provide funding. The Commissioner then wrote a letter dated 30 June 2011 in response to the Attorney General. Mr. Oppal stated: "It would be the height of unfairness to require unrepresented individuals to cross-examine police who are represented by highly qualified counsel."³⁷

The Attorney General of British Columbia reiterated his refusal to provide funding to any of the groups granted standing by Commissioner Oppal (except for the one lawyer who represents some of the families of Pickton's victims) on July 22, 2011.

The decision of the Government of British Columbia to deny funding to women's groups, including Aboriginal women's groups, as well as to Aboriginal organizations - both national and provincial - and to organizations that provide services in the Downtown Eastside of Vancouver, is shocking. The Government's preference is to view the disappearances and murders of women in British Columbia as isolated incidents which affected a handful of families.

This is the first and only official inquiry appointed in Canada to examine the disappearances and murders of Aboriginal women, and the police responses to them. However, because of the denial of funding for legal counsel, the Native Women's Association of Canada has been forced to withdraw from the inquiry, as has the Women's Equality and Security Coalition, the Native Courtworkers Association, the Union of B.C. Indian Chiefs, the Carrier Sekani Tribal Council, the West Coast Women's Legal Education and Action Fund, the End Violence Association, and others.³⁸ All but two of the groups granted standing have withdrawn because they cannot participate without counsel, or because the process has become so unfair that it would be unconscionable to participate.³⁹ The remaining two, without lawyers, are unable to participate effectively. All the groups with systemic knowledge and information about the conditions of Aboriginal women, and vulnerable women, were, in effect, shut out.

On August 11, 2011, the Commission, on its own initiative, hired two "independent" counsel, one to represent the Downtown Eastside groups, and one to represent the interests of Aboriginal women.⁴⁰ Instead of correcting the problem, the appointment of these independent counsel constitutes additional discrimination.

³⁷ Letter from Commissioner Wally Oppal to the Honourable Barry Penner, Attorney General of British Columbia, 30 June 2011.

³⁸ Justine Hunter and The Canadian Press, "The Missing Women Inquiry: Who Is In and Who Is Out?", The Globe and Mail, October 10, 2011, online at: <http://m.theglobeandmail.com/news/national/british-columbia/bc-politics/missing-women-inquiry-who-is-in-and-out/article2196994/?service=mobile>

³⁹ B.C. Civil Liberties Association and Amnesty International pull out of Inquiry hearings, October 6, 2011, online at: http://www.bccla.org/pressreleases/11BCCLA_and_Amnesty_pull_out_of_inquiry%20.pdf

⁴⁰ Missing Women Commission of Inquiry, "Missing Women Commission Appoints Two Independent Counsel; Two Others to Participate Pro Bono", August 10, 2011, online at: <http://www.missingwomenInquiry.ca/2011/08/august-10-2011-missing-women-commission-appoints-two-independent-lawyers-two-others-to-participate-pro-bono/>

Not only have the Native Women's Association of Canada, and other women's organizations, been denied funding for legal counsel, and consequently, in effect, been excluded from the fact-finding hearing, they are now being spoken for by counsel whom they cannot control or instruct. They have not only been rendered voiceless, but another voice has been substituted for theirs, purporting to speak on their behalf.

The Inquiry began its hearings on October 11, 2011. It is now an unfair process, which treats the most marginalized women as though their knowledge and participation does not matter.⁴¹

Twelve Canadian experts on the inquiry process in Canada wrote to the Attorney General of British Columbia on September 7, 2011 to state that the Government of British Columbia's response to the Commissioner's ruling on standing and funding is unprecedented.⁴² An independent inquirer is understood to have the mandate to determine his own process, including determining which individuals and groups need to participate in order for the process to be fair. These experts also find that the appointment of "independent" counsel introduces "a new form of discrimination."

This Inquiry, which many individual women and women's groups in British Columbia hoped would be an opportunity for careful scrutiny of the conduct of police and justice officials, and of the factors which make Aboriginal women prey for violent men, cannot, as it is currently structured, fulfill these expectations. The Missing Women Commission of Inquiry may provide some answers for some families of women murdered by Robert William Pickton. But it cannot now address larger systemic issues, since the Native Women's Association of Canada, and other organizations, are excluded from participation. The Inquiry has become a continuation of the discrimination against the most vulnerable women, not a correction of it.

Conclusion

Each of the measures described above is a fragment of what is needed. The steps taken by Canada so far do not demonstrate, either alone or in combination, a serious and co-ordinated commitment to exercise due diligence to prevent, protect, prosecute and remedy violence against Aboriginal women and girls.

⁴¹ Indian Country Today Media Network, October 9, 2011, online at: <http://indiancountrytodaymedianetwork.com/2011/10/mass-boycott-of-missing-women-commission-by-advocacy-groups/>

⁴² Experts Call Decision Not To Fund Counsel for Missing Women Inquiry Shocking and Unprecedented, September 7, 2011, online at: <http://www.amnesty.ca/files/MissingWomenLetterSeptember7,%202011.pdf>

* Sharon McIvor and Shelagh Day are founders of the Canadian Feminist Alliance for International Action (FAFIA), which is a national alliance of Canadian women's equality-seeking organizations. Shelagh Day chairs the Human Rights Committee, and Sharon McIvor is a member. FAFIA's central goal is to ensure that Canada respects, protects and fulfills the human rights of women as set out in Canada's *Charter of Rights and Freedoms* and in the international human rights treaties that Canada has ratified. Shelagh Day is also a Director of the Poverty and Human Rights Centre, which has assisted many groups in the preparation of reports for international treaty bodies. Sharon McIvor is a lawyer and she teaches Aboriginal law at Nicola Valley Institute of Technology in Merritt, British Columbia. She is a renowned Aboriginal women's rights leader in Canada, and was the plaintiff in *McIvor v. Canada*, a constitutional challenge to ongoing sex discrimination in the status registration provisions of the *Indian Act*. As a result of the decision of the B.C. Court of Appeal in Ms. McIvor's case, the Government of Canada amended the *Indian Act* in January 2011 to recognize the Indian status of 20,000-40,000 Aboriginal women and their descendants who had previously been excluded. This amendment is known as "the McIvor amendment." However, because the Government's amendment still does not completely remove sex discrimination from the *Indian Act* provisions, Ms. McIvor has filed a petition with the United Nations Human Rights Committee. That petition is currently under consideration. Both Shelagh Day (2008) and Sharon McIvor (2011) are recipients of the Governor General's Award in Commemoration of the Person's Case, which is the highest honour given in Canada for contributions to advancing the equality of women.

