United Nations CEDAW/C/OP.8/CAN/1

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
6 March 2015

Original: English only

ADVANCE UNEDITED VERSION

Committee on the Elimination of Discrimination against Women

Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women[1]

Contents

[1] The present report takes into account the comments contained in paragraph 14 of the State party's observations submitted on 20 February 2015 in accordance with article 8, paragraph 4, of the Optional Protocol, to the extent that they were considered relevant by the Committee.

I. Introduction

1. In accordance with article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (the Convention), if the Committee on the Elimination of Discrimination against Women (the Committee) receives reliable information indicating grave or systematic violations by a State party of the rights set forth in the Convention, the Committee shall invite the State party to cooperate in the examination of the information and to this end, submit observations with regard to the information received. Subsequently, the Committee may designate one or more of its members to conduct an inquiry and to report to the Committee thereon. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory. An inquiry shall be conducted confidentially by the Committee and the cooperation of the State party shall be sought at all stages of the proceedings.

2. Canada (hereinafter referred to as "the State party") acceded to the Convention on 10 December 1981 and ratified the Optional Protocol on 18 October 2002. The Optional Protocol entered into force for the State party on 18 January 2003.

II. Summary of information received from NGOs on missing and murdered Aboriginal women

3. The Committee received letters from the Feminist Alliance for International Action (FAFIA) dated 17 January 2011 and 12 September 2011, and a letter from the Native Women's Association of Canada (NWAC) dated 20 September 2011 requesting that the Committee initiate an inquiry under article 8 of the Optional Protocol, alleging grave and systematic violations by the State party of the rights set forth in the Convention, namely that: Aboriginal women and girls experience extremely high levels of violence in Canada, particularly the high number of disappearances and murders of Aboriginal women; Aboriginal women report rates of violence including domestic violence and sexual assault 3.5 times higher than non-Aboriginal women; young Aboriginal women are five times more likely than other Canadian women of the same age to die of violence; Aboriginal women and girls experience both high levels of sexual abuse and violence in both their own families and communities as well as within society. The NGOs submitted information on the disadvantaged social and economic conditions in which Aboriginal women and girls live, which make them vulnerable to and unable to escape from violence; and on the alleged failure of the police to investigate promptly and thoroughly cases of missing or murdered Aboriginal women as well as protect Aboriginal women and girls from other forms of violence.

4. These NGOs further denounced the reluctance of the State party to treat violations of human rights of Aboriginal women and girls as a national concern warranting immediate and effective State action at all levels, as shown by the State party's rejection of calls for: a) a national action plan that would address both the root causes of the violence and the identified failures of the police and the justice system to prevent the violence, protect women from it and respond effectively to it when it occurs, and b) a national public inquiry into missing and murdered Aboriginal women. The NGOs also denounced the absence of a coordinated structure and broad policies to address these issues.

5. The NWAC had collected data showing that nationally, between the 1960s and 2010, 582 Aboriginal women and girls went missing or were murdered in the State party, the majority of which occurred in the western provinces and in urban areas. Since 2010, it was able to collect further information on approximately 80 additional cases up to September 2013. Apart from these "known cases" of missing and murdered Aboriginal

women, the NWAC believes that, by far, the number of missing and murdered Aboriginal women exceeds these documented cases.

6. According to NWAC information, two thirds of the disappearances and deaths of Aboriginal women occurred in British Columbia, Alberta, Manitoba and Saskatchewan. In British Columbia, the NWAC documented 160 cases of Aboriginal women and girls who went missing or were murdered between the 1960s and 2010, significantly more than in any other province or territory in Canada. This province also had the highest unsolved rate of murders of Aboriginal women and girls. The notorious 724-kilometer stretch of Highway 16 between Prince George and Prince Rupert in British Columbia is called the Highway of Tears, because of the murders and disappearances that have occurred in its vicinity.

7. The NWAC indicated that, in 2010, nearly half of the 582 cases remained unsolved, while the overall rate of resolved homicide cases in the State party is about 80 percent. It also found that the 153 cases of murders of Aboriginal women committed between 2000 and 2008 represent approximately 10 percent of the total number of female homicides in the State party during this period, despite the fact that Aboriginal women make up only three percent of the total female population. The NWAC also indicated that a large number of Aboriginal women who had gone missing or had been murdered had been involved in prostitution.

8. In addition to the request for an inquiry made by NWAC and FAFIA, support letters to conduct an inquiry were received by the Committee, in October 2011, from the following NGOs: Opposition Caucus of the British Columbia Legislative Assembly, the Union of British Columbia Indian Chiefs, PIVOT, BC Liberties Association, West Coast Leaf, Ending Violence Association, Native Youth Sexual Health Network and Downtown East Side (DTES) Neighbourhood Council. The Committee also received a letter from the Downtown Eastside Women's Centre (DEWC) on the same matter. In March 2012, the Committee received a letter from the Canadian Association of Social Workers (CASW) indicating that Canada does not yet have in place a co-ordinated national plan to address the root causes and remedy the consequences of the violence against Aboriginal women and girls, or a national strategy for investigating the on-going violence against Aboriginal women.

9. The Committee also received letters and information from five Members of Parliament asking that the CEDAW conduct an inquiry and highlighting: a) the disproportionately high rate of missing and murdered Aboriginal women; b) the lack of interest of the Government in investigating the cases of missing and murdered Aboriginal women; c) the structural issues within the Canada's criminal justice system; and d) the government's refusal to deal with root causes of violence against Aboriginal women.

III. CEDAW's procedural history

A. The reporting procedure

10. Prior to the start of the inquiry procedure the Committee considered the combined sixth and seventh periodic report of the State party on 22 October 2008 and requested in its Concluding Observations that it submit follow-up information, within one year, on the Committee's recommendations (paragraph 32) that the State party: a) examine the reasons for its failure to investigate the cases of missing or murdered Aboriginal women and take the necessary steps to remedy the deficiencies in the system; b) urgently carry out thorough investigations of the cases of Aboriginal women who have gone missing or have been murdered in recent decades; and c) carry out an analysis of those cases in order to determine whether there is a racial profile to the disappearances and take measures to address the problem if that is the case.

11. On 9 February 2010, the Committee received the follow-up report of the State party with a three-month delay. At its forty-sixth session in July 2010, the Committee considered that the above-mentioned recommendations had not been implemented. On 25 August 2010, the Committee requested additional information from the State party, which it received on 8 December 2010. At its 48th session in January 2011, the Committee considered that the recommendations had not been implemented and on 10 February 2011, it sent a letter to the State party requesting, by 15 January 2012, additional information on: a) the full implementation of paragraph 32 of the Committee's concluding observations; b) the impact and outcome of the initiatives mentioned by the State party; and c) the possibility of elaborating a national plan of action to address the problem of missing and murdered Aboriginal women and girls. On 25 August 2011, the State party responded that it would provide additional information only in the next periodic report due in December 2014.

12. In October 2011, at its 50th session, the Committee decided to discontinue the follow-up procedure on Canada as the State party had failed to provide additional information. It decided to consider the issue of violence against Aboriginal women pursuant to the information submitted under article 8 of the Optional Protocol.

B. The inquiry procedure

13. At its fiftieth session in October 2011, the Committee examined the information received from NGOs and considered that it was reliable and indicative of grave or systematic violations by the State party of the rights set forth in the Convention. This opinion of the Committee was corroborated by information received by the Committee on the Elimination of Racial Discrimination under its reporting procedure as well as by information received by the Special Rapporteur on the rights of Indigenous peoples. Accordingly, at its fifty-first session in February 2012, the Committee submitted the information received from the NGOs to the State party and invited it, pursuant to article 8, paragraph 2 of the Optional Protocol, to submit observations within two months with regard to the information received.

14. On 9 May 2012, the State party sought a one-month extension to submit its observations. On 15 June 2012, the State party submitted its observations in which it acknowledged the serious nature of the allegations but indicated that: a) it had taken significant steps to address the issue of missing and murdered Aboriginal women; b) law enforcement officials in Canada had acted with due diligence and independence in response to all reports of violence against women, including violence against Aboriginal women and girls; c) law enforcement agencies had promptly and thoroughly investigated cases when Aboriginal women or girls were reported missing or murdered; d) resources would be better spent on taking action to address the issue than developing a national action plan; and e) the State party continues to take steps to improve the socio-economic situation of Aboriginal women and girls which makes them vulnerable to violence. The State party also argued that there is no evidence that any actions or omissions by Canada constitute grave or systematic violations of rights under the Convention and that therefore an inquiry by the Committee was not warranted.

15. At is fifty-second session, in July 2012, the Committee, on the basis of all information before it, including the State party's observations, as well as relevant conclusions of other treaty bodies and special procedures mandate holders, decided to establish and conduct an inquiry, in accordance with article 8, paragraph 2, of the Optional Protocol and rule 84 of its Rules of Procedure, and to designate three Committee members for that purpose. The Committee also decided to seek the consent of the State party, pursuant to article 8, paragraph 2, of the Optional Protocol and rule 86 of its Rules of Procedure, for a visit to its territory to be undertaken in early 2013. The Committee transmitted its request to the State party on 13 September 2012.

16. In the absence of a response, the Committee sent three reminders to the State party on 11 October 2012, 29 November 2012 and 7 January 2013.

17. On 29 April 2013, the State party gave its consent to a visit by the designated members to its territory. Due to the late answer of the State party, the Committee decided to postpone the suggested dates of the visit from spring 2013 to 9 to 13 September 2013. On 15 July 2013, the State party agreed to the suggested dates of the visit.

18. The State party identified a focal point for the organization of the visit and proposed a programme. In July 2013, the CEDAW Secretariat communicated to the State party a background note, which included the "General principles guiding the visit of the CEDAW delegation in Canada" and also indicated that the visit aimed at collecting further information on the fulfilment of State responsibility, including responsibility of due diligence to: (a) prevent violence and protect Aboriginal women and investigate cases of missing and murdered Aboriginal women; (b) prosecute and punish perpetrators of violence against Aboriginal women and disappearances and murders of Aboriginal women; and (c) provide redress to the Aboriginal women victims of violence and to the families of missing and murdered Aboriginal women. The Committee underlined the importance for enabling the designated members to conduct the confidential inquiry in an independent and impartial manner, of ensuring their freedom of movement as well as the possibility for them to meet confidentially with all relevant stakeholders.

19. Two of the three designated experts, Mr. Niklas Bruun and Ms. Barbara Bailey, accompanied by two staff members of the Secretariat, conducted the visit to Canada from 9 to 13 September 2013.

20. On 4 September 2013, before the visit, the State party made a submission to the Committee concerning the inquiry. After the visit, the Committee requested additional information from the State party, which was provided on 15 January 2014.

IV. Context of the inquiry

A. Aboriginal community in Canada

21. The Aboriginal community is located in urban, rural and remote locations across Canada. It includes: First Nations, generally located on reserves; Inuit communities located in Nunavut, Northwest Territories, Northern Quebec (Nunavik) and Labrador; Métis communities; and communities of Aboriginal people (including Métis, Inuit and First Nation individuals) in cities or towns which are not part of reserves or traditional territories. There are more than 2400 reserves, 600 First Nations, and almost 60 Aboriginal languages. In 2011, 1.4 million people in Canada reported Aboriginal identity representing 4.3% of the total population of Canada.

22. The Royal Commission on Aboriginal Peoples (RCAP) estimated that, since the beginning of the colonization, the population of Aboriginal peoples in Canada decreased 80 percent from the time of contact to confederation. Some peoples such as the Beothuck in Newfoundland became extinct. This was coupled with forced displacement from traditional lands and the assignment of Aboriginal peoples to small reserves where maintenance of traditional sustenance was often not possible. The establishment of reserves were based on historic treaties between Canada (earlier the British Crown) and the Aboriginal people made between 1701and 1923.

23. It is accepted by the State party that this system has created a legacy of cultural dislocation, and trans-generational trauma and violence. In its submission, the State party indicated that, beginning in 1800s, the Government of Canada strengthened its "assimilation" efforts through the establishment of residential schools for Indian children.

The Government obliged parents to send their children to these schools. The educational experience of Aboriginal children has therefore been marked by the residential school system which has had profound and long lasting damage as generations of Aboriginal children have grown up in residential schools alienated from their cultures and languages, with devastating effects on the maintenance of indigenous identity. Many of those children suffered physical and sexual abuse by residential school staff. The intergenerational impact of the Indian residential school system, and foster or adoptive placements, is directly linked to the disproportionately high rates of violence and abuse that Aboriginal women and girls suffer today, as that system has historically shaped Aboriginal communities and has resulted in the break-up of families and communities.

24. The impact of laws enacted during the colonial period has significantly reinforced gender-based discrimination and inequality, such as provisions in the Indian Act on eligibility to be registered as an Indian as well as on the transmission of Indian status. Notably, eligibility to certain rights and social benefits, such as housing on reserves, voting rights in relation to election of reserve band councils, the right to reside on reserve lands, harvesting rights, access to on reserve housing, support for education, social services, and health benefits are attached to such status. The Indian Act discriminated against First Nations women for over a century, by depriving them of their Indian status upon marriage to a non-Indian1. Amendments brought respectively in 1985 and 2010 addressed some of the discriminatory aspects against descendants of First Nations women, but a number of issues were left unaddressed. Indeed, according to the 2010 amendments, those newly entitled to Indian status cannot transmit their status if they have a female rather than a male First Nations ancestor. In addition, pursuant to the 1985 amendments, children of mothers registered under section 6 (2) who have unstated fathers cannot be eligible for registration. Given the high rates of unstated and/or unrecognised paternity, Aboriginal women are more adversely affected by non-registration and non-membership than men and as a result cannot access the rights and benefits for their children conferred by registration and membership. [2]

25. Section 35 of the Constitution Act (1982) recognises and affirms existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. The United Nations Committee on the Elimination of Racial Discrimination (CERD) recently noted that the right to consultation as provided in legislation and the right to prior, free and informed consent to projects and initiatives concerning the Aboriginal community were not fully applied by the State party, and may be subject to limitations. It also mentioned that the Aboriginal community was not always consulted for projects conducted on their lands or which affect their rights and that treaties with Aboriginal communities were not fully honoured or implemented. Passing legislation that erodes treaty rights of the Aboriginal community without duly consulting with Aboriginal community as per section 35 of the Indian Act has been a persistent issue, as reported by many civil society stakeholders and Aboriginal authorities.[3]

26. The Committee on the Elimination of Racial Discrimination has noted the persistent levels of poverty among the Aboriginal community and the persistent marginalization and difficulties faced by them in accessing employment, housing, drinking water, health and

[2] Given the high rates of unstated and/or unrecognised paternity, Aboriginal women are more adversely affected by non-registration and non-membership than men and as a result cannot access the rights and benefits for their children conferred by registration and membership.

[3] For example, Bill C-45, now known as "Jobs and Growth Act" was passed in December 2012 and brings changes to numerous provisions in different pieces of legislation and regulations, including the Indian Act. It is in reaction to the fact that some of these changes surrender treaty lands and territory too easily that the initially grassroot movement Idle No More movement was created and grew into a global protest movement.

education, as a result of continued structural discrimination. The United Nations Special Rapporteur on the rights of Indigenous peoples, James Anaya, has indicated that the First Nations communities are systematically underfunded as compared to non-Aboriginal towns and cities; the Auditor General highlighted significant funding disparities between on-reserve services and those available to other Canadians; and the Canadian Human Rights Commission indicated that, for decades, studies have testified to the social injustice faced by the Aboriginal community on and off reserve.

B. Federal structure of the State party

27. The State party has a federal structure and a parliamentary system of government. The constitutional division of powers is such that government responsibilities and legislative functions are shared between the federal level and the provincial levels. While the federal government has exclusive and complete jurisdiction over the territories, it delegated some of its powers to the governments of the Northwest Territories and Yukon.

28. Section 91 of the Constitution Act (1867) regulates the legislative distribution of powers between the federal and provincial/territorial levels. Under s. 91(24), the federal government has exclusive jurisdiction over Indians and lands reserved for Indians. Provincial laws of general application may apply, however, where they do not affect "Indianness" and are within provincial exclusive jurisdiction.5 Regarding members of Aboriginal communities living in urban areas, i.e. off-reserve, there is some overlap, depending on the subject matter, as they may fall within the jurisdiction of either the provinces/territories or the federal government or both. However, those members of Aboriginal communities living off-reserve have the possibility of benefitting from the same programs and services as other Canadian citizens.

29. While some concurrent powers are specifically mentioned in sections 94 and 95 of the Constitution Act (1867), in practice, certain areas of government action, not specifically identified and assigned to one or both levels of government, have become concurrent or shared powers between the two levels of Government. As the Constitution does not explicitly distribute powers in all areas, there is a certain degree of overlap and flexibility between federal and provincial/territorial jurisdiction in many areas, such as legal aid or social assistance. In those areas, responsibilities may be shared and programmes jointly funded. According to the Constitution, which confers a residual power to the federal government, any matter that does not come within the power of the provincial legislature falls within the power of the federal Parliament.[4] Further, section 36 of the Constitution Act (1982) provides for safeguards regarding “equalization and regional disparities” with a view to ensuring “commitment to promote equal opportunities”. [5] In particular, section 36 (2) commits the federal government to redress regional disparities in the provision of public services.[6] This provision operationalizes the agreement of the federal and provincial levels

[4] Section 91: it is under the responsibility of the federal government to “make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.”

[5] Section 36 (1): “Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to (*a*) promoting equal opportunities for the well-being of Canadians; (*b*) furthering economic development to reduce disparity in opportunities; and (*c*) providing essential public services of reasonable quality to all Canadians.”

[6] Section 36 (2) on “Commitment respecting public services” provides that : « Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. »

of government to share resources in order to maintain social programmes and public services of sufficient quality in the State party and ensure nation-wide standards in this regard.[7]

30. According to section 91 (27) of the Constitution, criminal law is under the sole responsibility of the federal government. However, the administration of justice is grounded as a provincial matter pursuant to section 92 (14).[8] Provinces are also responsible to provide police services to enforce municipal, provincial and federal criminal laws. Most provinces and territories (except Ontario and Quebec) have entered into agreements with the federal government to contract police services from the Royal Canadian Mounted Police (RCMP).

31. The Royal Canadian Mounted Police (RCMP) performs three separate policing functions, at federal, provincial and municipal levels. Municipalities can have their own independent police forces, like the Vancouver Police Department in the city of Vancouver. Municipalities which cannot afford having an independent police force contract the RCMP. This situation mostly occurs in municipalities in which there are Aboriginal communities. Under the First Nations Policing Program (FNPP), the RCMP currently provides policing services to certain First Nation communities.

V. Submissions presented by and information received from the State party[9]

A. Introduction

32. The State party submitted that it recognizes and takes very seriously the important issue of violence against Aboriginal women and girls. It has taken concrete steps to enhance prevention efforts and law enforcement and justice system responses, assist victims and their families, and improve the well-being of Aboriginal Canadians. It added that these measures have resulted in positive outcomes for Aboriginal women and girls, and the members of their families. While many challenges remain, the State party submitted that Canadian governments at all levels are working together with communities, civil society and Aboriginal Canadians to address these challenges and to make life safer for all Canadians.

33. Furthermore the State Party recalled that Canada has a strong framework for the protection and promotion of human rights, from the British North America Act to the many laws, programmes, policies and institutions in place across the country. It stated that Canada is an open and tolerant society that values individual rights and that it is committed

[7] Equalization is the Government of Canada's transfer program for addressing fiscal disparities among provinces. Equalization payments enable less prosperous provincial governments to provide their residents with public services that are reasonably comparable to those in other provinces, at reasonably comparable levels of taxation.

[8] Section 92 (14): "The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts."

[9] The State party provided its observations in a 40-page document on 14 June 2012, it submitted information prior to the visit of the designated experts in a 46-page document on 4 September 2013, and submitted a 142-page document in response to the follow-up questions sent by the Committee after the visit, on 15 January 2014. On 30 June 2014, the State party provided to the Committee the 2014 RCMP report called "Missing and murdered Aboriginal women: a national operational overview". Information in this section is based on these documents as well as on information collected from representatives of the State party by the designated experts during their visit to Canada. The subtitles are from the Committee.

to recognizing the right of every person and all peoples, including Aboriginal Canadians to be safe and to seek success and economic prosperity.

34. The Government of Canada : a) acknowledged the higher levels of violence against Aboriginal women and the disturbing number of missing and murdered Aboriginal women, and indicated that significant steps had been and were being taken to address these issues; b) indicated that it continued to take steps to improve the socio-economic situation of Aboriginal women and girls; and c) added that, in light of the measures being taken to address this serious problem, there was no evidence that any actions or omissions by Canada constitute grave or systematic violations of rights under the Convention.

35. The State party indicated that the Committee is not competent Rationae Temporis to address alleged pre-2003 violations which took place prior to the coming into force of the Optional Protocol in that year.

B. Root causes

36. The State party provided, in its submission to the Committee, information on the historical context of the root causes of cases of missing and murdered Aboriginal women, and on the resulting disproportionate vulnerability of Aboriginal women and girls to violence in comparison with their non-Aboriginal counterparts.

37. The State party argued that the vulnerabilities to violence of Aboriginal women and girls can be associated, more generally, with some of the effects of intergenerational trauma for Aboriginal people including poverty, language minority issues and cultural loss. Furthermore, the State party indicated that the issue of violence against Aboriginal women must also be viewed within the larger context of the legacy of the Indian Residential School system, which operated for over a century and played a central role in intentional efforts of historical governments to assimilate Aboriginal peoples. The State party added that more than 150,000 Aboriginal children were separated from their families and communities to attend Indian Residential Schools. It indicated that, while attending these schools, many children were subject to a variety of abuses, and were forbidden to speak their traditional languages or practice their culture. The State party admitted that residential schools resulted in further cultural loss, including loss of parenting skills and loss of language. It stated that the impacts of these schools on Aboriginal families and communities are believed to be far-reaching and intergenerational.

38. The State party has taken important measures with a view to forge renewed relationships with the Aboriginal community and address the adverse legacies of the colonial and post-colonial context. Thus, in June 2008, the Prime Minister addressed a formal apology to former students of residential schools, their families and communities for the State party’s role in the operation of the Indian Residential School System. He acknowledged that the complex history and legacy of Indian Residential Schools had contributed to social problems that continue to exist in many Aboriginal communities today. The State party also established a Truth and Reconciliation Commission and committed to build relationships based on the knowledge of shared history. Furthermore, considerable progress was made with the repeal of section 67 of the Canadian Human Rights Act, in 2008 and 2011, which had hitherto prevented people from filing complaints of discrimination resulting from the application of the Indian Act.

C. General action for prevention and protection

39. In its submission, the State party mentioned that violence against Aboriginal women and girls is linked to socio-economic disadvantage which renders Aboriginal women more

vulnerable to exploitation and abuse, and that any effective solutions to curb violence against missing and murdered women must address these root causes.

40. The Government has developed a number of projects to combat violence against women, with substantial funding. Some of these projects specifically target Aboriginal women, while others include components on violence against Aboriginal women. These projects include the following: a) Status of Women Canada (SWC) approved funding to the NWAC for the projects Evidence to Action I and II and provided direct funding to about 30 organizations for activities aimed at reducing violence against Aboriginal women; and b) The Department of Public Safety Canada supported the development of community safety plans by Aboriginal communities to reduce violence and improve the safety of Aboriginal women in 24 communities.

41. The Family Violence component under the Justice Partnership and Innovation Program (JPIP) of the Department of Justice grants funding to Aboriginal organizations to develop materials for the general public on the importance of breaking intergenerational cycles of violence and abuse that threaten Aboriginal communities. Aboriginal Affairs and Northern Development Canada (AANDC) developed the Family Violence Prevention Program, providing operational funding to a network of 41 shelters in First Nations communities, as well as support for community-based prevention projects. In 2011-2012, this program supported approximately 302 proposal-based prevention projects. The Canada Mortgage and Housing Corporation provides funding to create new and repair or improve existing shelters for women, children, and youth who are victims of family violence. From 2008 to September 2013, almost 4,357 shelter units/beds for victims of family violence received federal funding, including 299 on-reserve. In September 2013, the Family Homes on Reserves and Matrimonial Interests or Rights Act was passed. It provides for emergency protection orders that grant temporary exclusive occupation of the family home.

42. The government of British Columbia implemented a Domestic Violence Action Plan in December 2010. It supports more than 700 places in transition houses and Safe Houses as well as Second Stage Housing for women and their children who are escaping abuse. In British Columbia, VictimLinkBC, a toll free helpline for victims of violence and other crimes, is available in over 110 languages including 17 Aboriginal languages.

43. The State party indicated that the Ministry of Aboriginal Affairs and Northern Development Canada (AANDC) provides significant funding to meet housing needs on-reserve and the Canada Mortgage and Housing Corporation supports the housing needs of Aboriginal households on and off-reserve. Through AANDC and Canada Mortgage and Housing Corporation, the Government of Canada invests an estimated $300 million a year to address housing needs on-reserve. Between 2006-2007 and 2012-2013, this annual investment contributed to the construction of about 1,625 new houses and the renovation of 3,000 existing houses. In 2013, Canada Mortgage and Housing Corporation's funding supported: the construction of 546 new units; the renovation of 1,068 existing houses; ongoing subsidy for some 28,800 households living in existing social housing capacity building; and the delivery of 183 capacity development training sessions to First Nations. Ninety percent of Canada Mortgage and Housing Corporation's on-reserve programs and services are delivered by Aboriginal groups. Some $116 million is also provided annually to support housing needs of Aboriginal households off-reserve. The State party further indicated that it invested to build and renovate water infrastructure on reserve, supported the development of a long-term strategy to improve water quality in First Nations communities and introduced in 2012 the Safe Drinking Water for First Nations Act to ensure that First Nations have access to safe drinking water. In 2010, the State party announced a five-year funding commitment to renew key Aboriginal health programs to address high rates of diabetes, reduce risks for youth suicide, and support families with young children. The State party also developed the Federal Framework for Aboriginal Economic Development in 2009 as well as the Aboriginal Skills and Employment Training

Strategy that supports employment programmes and services geared to the needs of Aboriginal peoples.

44. The State party launched the Education Partnerships Programme, the First National Student Success Program and the strategy "First Canadians, Canadians First" developed with Inuit education stakeholders; it appointed the National Panel on First Nation Elementary and Secondary Education; it provided funding to help First Nation and Inuit students cover tuition and related expenses associated with post-secondary education; and it supported Aboriginal Head Start programming both on reserve and in urban and northern communities.

45. The State party strongly submits that government and police officials had addressed the matter of violence against Aboriginal women in a strategic, coordinated and collaborative manner. Therefore it does not see any need for the development of a formal National Action plan to combat violence against Aboriginal women.

D. Specific actions for prevention and protection

46. Through the Northern and Aboriginal Crime Prevention Fund, the federal government provides time-limited funding to assist communities in their ability to respond to crime issues and to support crime prevention initiatives.

47. In February 2006, the Federal, Provincial and Territorial Deputy Ministers of Justice established a Working Group of the Coordinating Committee of Senior Officials (Missing Women Working Group "MWWG") to review issues related to the high number of missing and murdered women in the State party. According to the report, the MWWG included members from the Justice and Public Safety Departments of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Canada. The MWWG released a summary report in 2010 and a comprehensive report in January 2012 containing 52 recommendations.

48. The State party indicated that in 2010, the federal government announced a five-year investment "to support a seven-point strategy aimed at improving the response of law enforcement agencies and the justice system in cases of missing and murdered Aboriginal women and girls to meet the needs of Aboriginal families and increase community safety". This commitment included a number of significant RCMP and Public Safety initiatives, many of which are aimed at widely addressing the issue of missing and murdered persons, without specifically focusing on Aboriginal women. As part of the strategy, the RCMP launched a national public website for missing persons and unidentified human remains in January 2013.

49. In December 2011, the RCMP and the Assembly of First Nations signed a joint agreement to work collaboratively on issues related to missing and murdered Aboriginal persons across the country. In March 2013, the RCMP and NWAC partnered on a hitchhiking poster initiative aimed at the prevention of disappearances and murders of Aboriginal women and girls.

50. In 2010, the Parliamentary Standing Committee on the Status of Women undertook a study on the nature and extent of violence against Aboriginal women. Final recommendations were issued in December 2011. Subsequently, in 2013, a Special Parliamentary Committee on Violence Against Indigenous Women was established by the Parliament to conduct a study on the high rates of missing and murdered Aboriginal women in the State party. It conducted meetings and interviews between March and June 2013 and its report was released in March 2014. The report covers the scope and severity of violence against Aboriginal women and girls in Canada, the root causes of violence and violence prevention, protection of victims of violence and support to families of victim. It summarizes the views of the witnesses heard and provides 16 recommendations and

concludes with a recommendation that the Federal Government implement all of the recommendations in a coordinated action plan.

51. At the provincial level, initiatives in British Columbia, Manitoba and Alberta are of particular relevance given the high rates of missing and murdered women. The RCMP North District Division in Prince George (BC) is supporting the expansion of the Rural Crime Watch Program to include Highway Watch along Highway 16 with the establishment of a toll-free crisis line.

52. In British Columbia, to prevent cases of missing and murdered Aboriginal women, the RCMP increased their patrols along the sections of Highway 16 near First Nations communities and undertook hitchhiking prevention projects. The RCMP also supports a University study on the risks and causes of hitchhiking.

53. As regard child welfare, the State party indicated that AANDC is implementing an Enhanced Prevention Focused Approach (EPFA) which provides funding for child and family services on-reserve for additional supports and tools that allow parents to better care for their children before a situation becomes a matter of protection. It further indicated that the number of children being placed into approved foster care has decreased since 2009, as opposed to the number of children being placed as non-wards or with extended family or "persons of sufficient interest".

54. In its responses to the Committee's follow-up questions subsequent to the country visit, the State party described a series of initiatives taken by several Provinces and Territories to raise awareness among the public on discrimination faced by Aboriginal communities, including the update of the media information kit on domestic violence and the proclamation of the month of June as Aboriginal History Month in Quebec, and the development of a resource guide for teachers in Manitoba.

55. Canadian law criminalizes women as well as clients who communicate in a public place for the purpose of engaging in prostitution. The Government is currently reviewing the decision of the Supreme Court of Canada of December 2013 which found the following provisions of the Criminal Code to be inconsistent with the Canadian Charter of Rights and Freedoms and therefore invalid, namely: section 210 on bawdy house, paragraph 212(1)(j) on living on the avails of prostitution, and section 213 on communicating in a public place for purposes of prostitution (section 213).

56. The Federal Government took several measures on prostitution, including the establishment of the National Crime Prevention Centre (NCPC), which intervenes at a preventive stage, and has projects to assist persons exiting the sex industry. The Government of British Columbia developed the Bridging Employment Program, which provides services to assist women victims of violence and/or abuse and women leaving the sex trade, in Vancouver, Prince Rupert, Duncan and Burnaby. The Vancouver Police Department participates in the Sister Watch project aimed at improving safety of marginalised women in Vancouver Downtown Eastside. The RCMP in Winnipeg developed the Exploited Persons Proactive Strategy (EPPS), as part of the Project Devote, to help to minimize risk and reduce the incidence of crimes against potentially exploited persons, including Aboriginal women exploited in prostitution.

57. The State party has a comprehensive legislative and institutional anti-trafficking framework. In 2005, it amended article 279 of its Criminal Code to specifically prohibit human trafficking in line with international standards. It also has additional protection at provincial levels: a particularly relevant good practice example is the Manitoba Child Sexual Exploitation and Human Trafficking Act adopted in April 2012. The State party established a Human Trafficking National Coordination Centre (HTNCC) in 2005 to monitor and coordinate anti-trafficking law enforcement efforts in relation to prevention, protection and prosecution, and created six regional RCMP Human Trafficking Awareness

Coordinators (HTAC). Cultural sensitivity training in relation to the specific needs of the Aboriginal community was given to several of the HTNCC.

58. In 2012, the State party adopted a National Action Plan to Combat Human Trafficking, in which Aboriginal women and girls are identified as a "high-risk population". The Action Plan acknowledges that "there are still many gaps in our knowledge about how human trafficking plays out in Canada, including in Aboriginal communities" and that "much of the information in this area is anecdotal." Training has been provided to law enforcement personnel and judicial authorities to respond to the ongoing vulnerability of Aboriginal and immigrant women. The National Action Plan also identifies the populations and places most at-risk and provides for information gathering on the relevant forms of exploitation

59. At the provincial level, British Columbia developed an Action Plan to Combat Human Trafficking for the period 2013-2016, the guiding principle of which is to recognize the unique vulnerabilities of Aboriginal youth and women. The Action Plan recognizes: (a) the disproportionately high percentage of Aboriginal youths disconnected from their families and exposed to a greater risk of being trafficked; (b) the links between organized gang crime, human trafficking and sexual exploitation; and (c) the lack of research on all aspects of human trafficking, in particular on the extent of labour trafficking and the internal trafficking of Aboriginal youth and women in British Columbia. Ontario has established an advisory committee on human trafficking to strengthen and better coordinate the delivery of services to victims of human trafficking. Aboriginal organization representatives are members of the committee, as it was apparent that domestic trafficking disproportionately affects Aboriginal women and girls in the province. Funding was given to the Assembly of Manitoba Chiefs to raise awareness and develop recommendations on the issue of human trafficking and sexual exploitation among First Nations communities in the province. Further, during the country visit, the State party also indicated its intention to undertake research on trafficking of Aboriginal women.

E. Police initiatives to improve investigations of missing and murdered Aboriginal women

60. Submissions received from the State party indicate that a number of initiatives have been taken at federal and provincial levels to improve the performance of the Canadian police forces in investigating and handling cases of missing and murdered Aboriginal women and girls. In 2012, the RCMP issued a national Best Practices document, compiled by the National Centre for Missing Persons and Unidentified Remains (NCMPUR), for the investigation of cases of missing persons and unidentified remains which applies in all RCMP jurisdictions and has been disseminated to the Canadian Association of Chiefs of Police, with a view to improving and standardizing the procedure for taking complaints, investigating and responding to them, defining accountabilities throughout the process for supervisors and managers. According to the State party, these directives address areas which have proved problematic and are not applied consistently across the State party, such as report intake, cross-jurisdictional issues, risk assessment and response, investigative steps and priorities, and interactions with families and communities. The RCMP North District Division in Prince George (BC) is supporting the expansion of the Rural Crime Watch Program to include Highway Watch along Highway 16 with the establishment of a toll-free crisis line. The Best Practices provide, notably, that: (a) there is no waiting period for reporting a missing person; (b) certain types of missing persons should not be treated differently at the beginning of the investigation; and (c) complaints regarding missing persons will be accepted and acted upon by any RCMP detachment, regardless of the jurisdiction. Additional procedures have also been developed by the RCMP, for specific regions or divisions, including in Manitoba and in British Columbia. The RCMP is currently developing a missing person strategy to develop a standardized organizational

approach to missing person investigations that will focus on accountability, partnerships, prevention and supporting families. The NCMPUR is currently developing training for investigators, which includes online components and in-class training.

61. Several integrated police task forces have been established to investigate outstanding cases of missing and murdered Aboriginal women in different areas of the country. In British Columbia, Project Even-Handed, now closed, was established for cases in Vancouver, and Project E-PANA, active since 2005 in Prince George, is investigating 18 cases dating from 1969 to 2006 (13 homicides and 5 disappearances). Project KARE was established in Alberta in 2003. Since 2011, Project Devote, in Manitoba, has investigated 28 cases dating back to 1961. Saskatchewan also established a Task Force on missing persons in 2005 and 2006, which resulted in the creation of the Provincial Partnership Committee on Missing Persons. In Yukon, the RCMP is working in partnership with the Territorial Government and the Yukon Aboriginal Women's Council on the Yukon Sisters in Spirit Project, which has collected the names of 27 missing or murdered Aboriginal women.

62. Other provincial efforts include the following. In 2004, the province of British Columbia established the British Columbia Missing Persons Centre (BCMPC), a centre of expertise for missing person investigations. With regard to the Vancouver area, subsequent to the conclusion of the investigations on the serial killer Pickton a comprehensive audit of the Vancouver Police Department (VPD) was conducted and extensive reforms undertaken. Moreover, both Alberta and Manitoba have enacted Missing Persons Acts, in 2011 and 2013, respectively, to facilitate and improve the police response in cases of missing person reports.

63. As of October 2013, there are 1,170 regular male members and 319 regular female members who are Aboriginal in the RCMP, representing 6.3 percent of male regular members and 1.7 percent of female regular members, respectively. To increase the cultural sensitivity of the police, efforts have been developed to recruit Aboriginal people in police forces.

64. Regarding cultural sensitivity and Aboriginal awareness, RCMP members attend a half-day generic training during their initial training at the Cadet Training Academy. They also have access to continuing education opportunities during their career, which include bias-free policing.

65. In Yukon and British Columbia, various programmes aim at fostering relationships between the RCMP and Aboriginal communities, such as gang awareness courses, joint sports activities and workshops with elders.

66. Following the adoption of the Enhancing Royal Mounted Police Accountability Act (2013), the existing Commission for Public Complaints against the RCMP (CPC) will be replaced by the Civilian Review and Complaints Commission (CRCC) in the course of 2014, with the aim of improving the transparency and accountability of investigations of serious incidents involving RCMP members. In accordance with the new law and the RCMP's External Investigation or Review Policy, cases of serious incidents involving an RCMP employee are referred to a provincially established regime if it has jurisdiction over RCMP conduct, or to the CRCC, where the investigation will be conducted by an external law enforcement agency or other duly-authorized investigative agency. The RCMP, where authorized by provincial statute, allows provincial investigation units, where they exist, to investigate RCMP actions resulting in death, serious injury or sensitive cases (e.g. allegations of sexual assault, corruption). Provincial special investigation units exist in British Columbia (the Independent Investigation Office), Alberta and Nova Scotia. Both Manitoba and Quebec are also planning on creating such bodies.

67. In its submissions to the Committee, the State party described a number of programmes directed at reducing the victimization, crime and incarceration rates among

Aboriginal people. For example, although the Aboriginal Justice Strategy (AJS) has been in effect since 1991, the number of Aboriginal women in prison has steadily increased. To address socio-economic and cultural challenges faced by Aboriginal people in accessing justice and legal services, the Department of Justice has provided federal funding for the Aboriginal Court Worker Programs since 1978, benefitting approximately 20,000 Aboriginal women each year.

68. The Justice Partnership and Innovation Program of the Ministry of Public Safety has an Access to Justice for Aboriginal Women Component (2010-2015) to support the development of school- and community-based pilot projects aimed to reduce the vulnerability to violence of "high-risk young Aboriginal women and girls". Through the First Nations Policing Program, Public Safety provides funding to provinces to support policing services in First Nation and Inuit communities, where most of the police services in Aboriginal communities are serviced by RCMP contingents.

69. The State party provides in its submission of 15 January 2014 information on the training of judges and prosecutors on cultural sensitivity and social context in regard to issues related to Aboriginal peoples.

F. Data collection

70. The State party envisaged that the NCMPUR, established in 2011 and run by the RCMP, would create the first national database for missing children/persons and unidentified remains (MC/PUR) accessible across jurisdictions by the end of 2013, but its development is still ongoing. Also, in May 2011, the Canadian Police Information Centre (CPIC), accessible to all police jurisdictions, added new fields to the database, which include Aboriginal identity in order to allow the police to better record such information.

71. In addition, the RCMP's National Aboriginal Policing Services led the RCMP in a file review across RCMP jurisdictions in February 2013. Each RCMP Division conducted a review of cases on missing persons from 1940 to 2013. RCMP also conducted a review of the number of murdered Aboriginal women, from 1932 to 2013, which validated 327 homicides, 98 (30%) of them being still under investigation. The State party noted, however, that the RCMP solved rate for Aboriginal female homicides for the period 2006-2012 is 82%, while it is 88% for non-Aboriginal women for the same period. The RCMP indicated in its May 2014 National Operational Overview Report that, "while solve rates remain similar between Aboriginal and non-Aboriginal female homicides, certain homicides appear to be solved less frequently than homicides overall. For example, homicides involving women who were reported to be employed as prostitutes were solved at a significantly lower rate than homicides overall: for Aboriginal victims in the sex trade, the solve rate was 60 percent" (page 15).

72. It its 2014 report, the RCMP also indicated that there were 164 missing Aboriginal females as of 4 November 2013 who make up approximately 11.3 percent of the total number of missing females (1,455 total). It added that it is possible that the total number of missing Aboriginal females in this data set is different than the actual number due to a variety of factors including a missing female not being identified as Aboriginal during the investigation and/or a disappearance not being reported to police. It further indicated that, out of the 164 missing Aboriginal women, 64 percent (105 individuals) are considered to have disappeared in suspicious/unknown circumstances (64 percent, 105 individuals) and 36 percent (59 individuals) in non-suspicious circumstances.

G. Efforts regarding prosecution and reparation

The British Colombia Inquiry

73. The Missing Women Commission of Inquiry (MWCI) was established by the Government of British Colombia in 2010 and mandated to review the police investigation of women reported missing from the Downtown Eastside of Vancouver from 1997 to 2002 and the circumstances surrounding the Criminal Justice Branch's 1998 decision to stay charges against Robert Pickton in a serious related incident. The Government of British Columbia identified the need for the Missing Women Commission of Inquiry because it recognized that there were lessons to be learned from the tragedy involving serial killer Robert Pickton.

74. The Commission of Inquiry was an independent, quasi-judicial body. The Government of Canada applied for, and was granted full participant status before the Inquiry. The Government of Canada fully participated and cooperated with the Inquiry.

75. Canada provided tangible assistance to the Inquiry by providing a large volume of documents relating to the involvement of the Royal Canadian Mounted Police (RCMP) in the missing women investigations, and by facilitating the provision of evidence from RCMP members who were involved in varying aspects of those investigations.

76. The report of the British Columbia Missing Women Commission of Inquiry was released on 17 December 2012. The Report was welcomed both by the Government of Canada and the government of British Columbia. It contains a large number of recommendations directed to the Province of British Columbia, many of which involve collaboration and consultation with other entities such as the City of Vancouver, the Vancouver Police Department, the RCMP and other agencies. The Government of British Columbia has outlined a process for consideration of the recommendations.

77. The British Columbia Department of Justice issued a status report on the implementation of the Missing Women Commission of Inquiry Report in November 2013.

Victim services

78. The federal and provincial/territorial governments share responsibility for responding to victims of crime. The provinces are primarily responsible for the administration of justice, which includes services to victims of crime and compensation for criminal injuries. The federal government's role focuses on the Criminal Code and the Corrections and Conditional Release Act. The specific services offered to victims vary between jurisdictions, some of which have a comprehensive Victims Bill of Rights, such as Manitoba where rights are legislated and enforceable.

79. Building on existing provincial and territorial efforts, the federal Government provides funding to provincial and territorial governments for victim services, where they exist, in order to increase their capacity to support and develop culturally-sensitive services for Aboriginal victims of crime. Programmes are being delivered by provincial governments or delegated to non-governmental organizations.

80. Some provinces have taken a proactive and responsive approach to adapt existing victim services to the unique needs of Aboriginal families. For example, in Yukon, Sisters in Spirit Project, which includes RCMP, the provincial government and civil society organizations, has developed a comprehensive toolkit targeting Aboriginal communities. The toolkit covers the different steps to be taken when reporting a crime and includes advice on RCMP procedures, victim services, the criminal justice process and trial proceedings. In Manitoba, the Victim Services Section of the Ministry of Justice is working with the police to provide information and direct support to families of missing persons. Project Devote has created a family liaison officer to ensure sustained contact between the investigation team and families and to assist the latter to navigate through the justice

system. The Victim Services section of the Saskatchewan Ministry of Justice has created three specialized Missing Persons Liaison posts in Regina, Saskatoon and Prince Albert. The federal government has recently consulted with the provinces, territories, victims of crime, the public and other stakeholders on the development of a federal Victims Bill of Rights.

H. State party's overall assessment

81. The State party acknowledged the higher levels of violence against Aboriginal women and the disturbing number of missing and murdered Aboriginal women. It indicated that significant steps had been and were being taken to address these issues and that it continued to take steps to improve the socio-economic situation of Aboriginal women and girls. The State party submitted that addressing the underlying issues contributing to the higher risks of violence faced by Aboriginal women and girls is a complex matter which warrants coordinated attention at all levels of government. The State party further submitted that it has acted with requisite due diligence to prevent violence against Aboriginal women and to investigate reports of disappearances and murders of Aboriginal women and bring perpetrators to justice and that, in light of the measures being taken to address this serious problem, there was no evidence that any actions or omissions by Canada constitute grave or systematic violations of rights under the Convention. Furthermore the State party submitted that its choice not to adopt a national action plan does not constitute a grave or systematic violation of the Convention. The State party concluded that the question before the Committee in the inquiry procedure should not be whether Canada has failed to address the underlying causes of violence against Aboriginal women or to investigate, prosecute and punish those responsible for the disappearances and murders of Aboriginal women and girls, because Canada has taken significant steps to address all of these matters. Canada submits, rather, that the issue at the heart of this inquiry should be whether the remaining challenges and outstanding cases amount to a grave or systematic violation of the Convention.

VI. Country visit

82. During their visit to Canada from 9 to 13 September 2013, the designated members, Mr. Niklas Bruun and Ms. Barbara Bailey visited Ottawa (Ontario) and Vancouver (British Columbia). In addition, Mr. Bruun visited Prince George (British Columbia (BC) and Winnipeg (Manitoba), while Ms. Bailey visited Whitehorse (Yukon).

83. The framework of the content of the visit was defined as being to collect further information on the fulfilment of State responsibility, including responsibility of due diligence to:

- Prevent violence and protect Aboriginal women and investigate cases of missing and murdered Aboriginal women;
- Prosecute and punish perpetrators of violence against Aboriginal women and disappearances and murders of Aboriginal women;
- Provide redress to the Aboriginal women victims of violence and to the families of missing and murdered Aboriginal women.

84. During the visit, the designated members met with representatives of the following authorities (in chronological order of the meetings):

(a) At federal level in Ottawa: the Minister and senior officials of the Ministry of Aboriginal Affairs and Northern Development; senior officials from the Canadian Mortgage & Housing Corporation, Health Canada, Employment and Social

Development Canada, Status of Women Canada, Public Safety Canada, the Department of Justice, as well as the Royal Canadian Mounted Police (RCMP); and

(b) At provincial/territorial and local levels:

i) In Vancouver: Ministry of Justice, Ministry of Aboriginal Relations and Reconciliation, Ministry of Public Safety and Solicitor General, RCMP, Vancouver Police Department;

ii) In Prince George: RCMP, Legislative Assembly of British Columbia, Mayor of Prince George;

iii) In Whitehorse: Department of Justice, RCMP, Public Prosecution Service of Canada; and

iv) In Winnipeg: Deputy Premier and Minister of Aboriginal and Northern Affairs, Department of Justice, and RCMP.

85. The designated members also met with the Acting Chief Commissioner of the Canadian Human Rights Commission, David Langtry; the Federal Ombudsman for Victims of Crime, Sue O'Sullivan; the Interim Chair of the Commission for Public Complaints (CPC) Against the RCMP, Ian McPhail; the Commissioner of the British Columbia Missing Women Commission of Inquiry, Wally Oppal; as well as representatives of the British Columbia Minister's Advisory Council on Aboriginal Women and of the Yukon Sisters in Spirit project (YSIS).

86. The designated members met with six members of Parliament and one former member of Parliament from the opposition.

87. They met with representatives of the Aboriginal community, including representatives of all five National Aboriginal Organizations (the Assembly of First Nations, the Congress of Aboriginal People, the Metis National Council, the Inuit Tapirisat of Canada and the Native Women's Association of Canada), and of Regional Aboriginal Organizations from British Columbia, Manitoba and Ontario. The designated members also met with representatives of Aboriginal Women's Organizations and Women's Human Rights Organizations, as well as regional, national and international NGOs. They also met with service providers for Aboriginal people on and off reserve, University professors from the Faculty of Law of the University of Ottawa, the Centre for Indigenous Governance of the Ryerson University and the Faculty of Law of the University of British Columbia, and 40 family members of missing and murdered Aboriginal women.

VII. Scope of the inquiry

88. In its submission of 4 September 2013, the State party indicated that the Committee is not competent Rationae Temporis to address alleged historic violations which took place prior to the coming into force of the Optional Protocol in 2003.

89. However, in the same submission, the State party acknowledged that "the past must be understood for its effects on the present situation" in arguing that a significant number of the cases (possibly 200 cases) occurred before the coming into force of the Optional Protocol in the State party.

90. The Committee reaffirms the principle of non-retroactivity of treaties and recalls article 28 of Vienna Convention on the Law of Treaties providing that, "unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a

party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

91. In the cases of missing and murdered Aboriginal women in Canada, the examination of the facts occurring after 2003 include the consideration of the continuing effects of the cases of missing and murdered Aboriginal women which occurred before 2003. These continuing effects include the investigations or lack of investigations of all unresolved cases of missing and murdered Aboriginal women, the long-term impact of resolved and unresolved cases of missing and murdered Aboriginal women on the families of victims, and the families of victims' unaddressed requests for reparation, including rehabilitation, compensation, satisfaction and guarantees of non-repetition. Indeed, it is apparent that the historical background combined with the non-resolution, to date, of a number of cases of missing and murdered Aboriginal women, have a significant impact on families and the Aboriginal community as a whole, in particular on their determination to seek redress and on their trust in the State party's ability to fully address the situation.

92. Against this background, the Committee considers that the inquiry will not draw any arbitrary historical borderline between events before and after 2003. The Committee, however, emphasizes that, when assessing whether there is grave or systematic violations by the State Party of rights set forth in the Convention, the Committee focuses its examination on the actions and/or omissions of the State party after the entry into force of the Optional Protocol in 2003.

VIII. Factual findings of the Committee

A. Introduction

93. The findings presented in this section are based on an analysis of information received from a number of sources prior to, during and after the visit, namely:

a) The State party's response in its various submissions to the Committee;

b) Information submitted by NGOS who requested the inquiry;

c) Information gathered from interviews conducted during the country visit with government officials, parliamentarians, representatives of independent bodies, NGOs, Aboriginal leaders, academics and families of missing and murdered Aboriginal women; and

d) Information from secondary sources such as Statistics Canada reports; the report of the Federal Ombudsman for Victims of Crime; the report of the Coordinating Committee of Senior Officials, Missing Women Working Group established in 2006 by the Ministry of Justice; the 2012 report of the British Columbia Missing Women Commission of Inquiry; the Concluding Observations of the Committee against Torture and the Committee on the Elimination of Racial Discrimination; the Universal Periodic Review report on Canada; and reports and statements of the Special Rapporteur on the rights of indigenous peoples, as well as UN, academic and civil society reports (see the list of documents in annex).

94. To analyse the issue of violence against Aboriginal women, including missing and murdered Aboriginal women in all its aspects, the factual findings cover the following issues: the vulnerability of Aboriginal women to violence due to the legacy of the colonization, their disadvantaged socio-economic situation, the reluctance of Aboriginal women to seek help from authorities for fear that their children be placed in foster care, and their vulnerability to prostitution and trafficking. The report also covers the high levels of

violence faced by Aboriginal women from within and outside the community and the response of the police and the justice system.

B. Assessment of the problem of violence against Aboriginal women

95. The designated members were informed about the disproportionately high number of Aboriginal women victims of violence in comparison to non-Aboriginal women. Civil society organizations stated that Aboriginal women and girls are far more likely than other Canadian women and girls to experience violence and to die as a result of violence. They indicated, as an example, that the rate is five times higher for Aboriginal women aged 25-44 than for non-Aboriginal women of the same age.

96. Civil society organizations indicated that, in 39 percent of known cases of missing and murdered Aboriginal women for which the background of the accused offender is known, the person charged was non-Aboriginal. Civil society organizations, however, reported gaps in the data collection of the background of accused offenders, specifying that in 41 percent of the cases the background of the accused offenders was unknown.

97. The Committee is concerned about the disproportionately high rate of Aboriginal women victims of violence, both in comparison with men and non-Aboriginal women. It notes, in particular, that Aboriginal women are exposed to all forms of violence, including sexual violence and murders, committed by different types of perpetrators, from within or outside the Aboriginal community.

98. Civil society organizations stressed that women's engagement in prostitution provides them with limited options, exposing them to a heightened risk of disappearance and murder. Vast research shows that the percentage of Aboriginal women engaged in prostitution is disproportionately high. While census data from 2006 show that Aboriginal women and men account for three percent of the total adult population of the State party, research indicates that, in some cities, an estimated 50-70 percent of women engaged in street prostitution are Aboriginal. Other research shows that the rate of Aboriginal women engaged in street prostitution is 70 percent in Winnipeg, 40 percent in Vancouver, and nearly 80 percent in Vancouver Downtown Eastside. The Committee notes that the disproportionally high rate of Aboriginal women engaged in prostitution, which renders them vulnerable to all forms of violence, as well as the underlying socio-economic causes of their vulnerability to prostitution and its link to missing and murdered Aboriginal women, are well-known by the Government based on studies conducted in this regard.

99. The Committee further notes the State party's acknowledgment that the circumstances leading to trafficking of Aboriginal women are not sufficiently known.

C. Assessment of the State party's response to violence against Aboriginal women

1. Lack of implementation of recommendations of studies and symposia addressing missing and murdered Aboriginal women

100. The Committee notes that in an effort to understand and address the complexity of the problem of violence against Aboriginal women, and in particular, the high number of missing and murdered Aboriginal women, inquiries and studies have been undertaken by both government and non-governmental entities but with limited follow-up of recommendations to address the problem.

101. Reports generated at the federal level by the State Party and received by the Committee include the 2011 report of the Parliamentary Standing Committee on the Status of Women, which undertook a study on the nature and extent of violence against Aboriginal

women. Final recommendations issued in December 2011 were strongly criticized by the political opposition: (a) for not reflecting the full scope of the initial mandate and the limited fact-finding undertaken; and (b) for not demanding a clear and coordinated federal response to prevent violence by addressing its root causes. Another initiative was undertaken by a Coordinating Committee of Senior Officials, Missing Women Working Group, established in 2006 by the Ministry of Justice with reports generated in 2010 and 2012. A third initiative was the release, in March 2014, of the report of the study undertaken by the Special Parliamentary Committee on Violence against Indigenous Women, called "Invisible women: a call to action – a report on missing and murdered Indigenous women in Canada". The report contains sixteen recommendations which are fairly general, several of which reflect on-going activities such as awareness raising, support for victims and police services. Although not yet implemented, the final recommendation calls on the Federal Government to implement all of these recommendations through a coordinated action plan. This suggestion runs counter to the position in the State party's observations and repeated by State party representatives during the country visit, that there was no need for a coordinated national action plan because a number of initiatives were already underway at both provincial and federal levels. The Committee considers that, even if it is implemented, this coordinated action plan would not be comprehensive enough as the final recommendations of the Special Parliamentary Committee on Violence against Indigenous Women are of a too general nature and they fail to cover some main issues, including police misconduct. In any event, the report lacked consensus with dissenting opinions by members representing the New Democratic Party and the Liberal Party.

102. At the provincial level, given the magnitude of the problem of missing and murdered women in British Colombia, in that same year, the Missing Women Commission of Inquiry (MWCI) was established and mandated to examine the issue and, inter alia, make recommendations regarding the initiation and conduct of investigations of missing women and suspected multiple homicides as well as recommend changes considered necessary respecting homicide investigations in British Columbia by more than one investigating organization. The Inquiry was limited to the Vancouver Downtown Eastside community, the most poverty-stricken area in the entire State where 80 percent of all street prostitutes are Aboriginal and was conducted between January 1997 and February 2002. This inquiry was criticized, inter alia, on two critical grounds: (a) the narrow scope of the mandate which focused only on police response over a particular time period (January 1997 to February 2002) in a particular location; and,(b) the absence of a specific focus on Aboriginal women despite their disproportionate representation among missing and murdered women in British Columbia. A further concern was the fact that the NWAC and other key organizations representing Aboriginal interests were denied funding for legal counsel and therefore could not participate on an equal footing with police officials who were provided publicly funded counsel. The basis of the refusal by the Attorney General was that funding outside of the legal aid programme is only provided by the Government when Charter rights are engaged. In a letter to the Attorney General, the Commissioner of the British Columbia Missing Women Commission of Inquiry stated that the decision of the Attorney General to refuse funding to representatives of NGOs and the DES community, who had been given standing in the Inquiry, was discriminatory and the height of unfairness and that the participation of the affected groups was necessary to fulfill the mandate of the Inquiry.

103. The designated experts took note of an increasing number of reports issued by independent bodies, University researchers and civil society organizations providing recommendations to the State party on how to better address the issue of missing and murdered Aboriginal women. Included among these reports by order of issuance are:

- The 2006 Symposium Highway of Tears Recommendation Report issued by members of the civil society following to a Symposium attended by Aboriginal community organizations and members of the civil society;
- The 2010 NWAC report "What their stories tell us";
- The 2011 report of University researchers for the British Columbia Ministry of Citizens' Services "Stopping violence against Aboriginal women, a summary of root causes, vulnerabilities and recommendations from key literature"; and
- The 2013 Human Rights Watch report "Those who take us away".

104. Civil society representatives with whom the designated experts met during the country visit reported that the State party had failed to implement a large number of these recommendations and was only at the stage of assessing others. In its follow-up questions to the State Party after the country visit, the Committee, therefore, asked for information on the status of implementation of different recommendations in two reports which have often been referred to by the State Party, namely the Highway of Tears Symposium recommendations (2006) and the report of the Ministry of Justice's Coordinating Committee of Senior Officials, Missing Women Working Group (2010, updated in 2012).

105. With respect to the British Columbia Highway of Tears recommendations, the State party indicated that "before proceeding further on implementation of specific recommendations of this symposium there is a need to review them to ensure they are still relevant and reflect the current situation".

106. The Committee is also concerned about another risk that economically disadvantaged Aboriginal women face, which increases their risk of exposure to violence. Hitchhiking is a common practice associated with poverty and studies show that this practice increases the risk of Aboriginal women to abduction and being a murder victim. A major focus of the Symposium was the risks associated with hitchhiking by Aboriginal women, particularly along Highway 16 and several of the 2006 recommendations addressed the issue of safe transportation. In its January 2014 submission the State party informed the Committee that, in 2013, seven years after the Symposium, the Ministry of Transportation and Infrastructure assessed the transportation options available for communities in remote areas, including those along the Highway 16 Corridor, and is planning targeted consultations to identify and promote safe transport options. Among other things, the designated experts were informed during a visit to Prince George that the suggestion of a "free ride" program for the Greyhound Bus Company was still not implemented but that the daily bus service along the 724 km "Highway (16) of Tears" between Prince George and Prince Rupert had been recently reduced to one trip per week. Ironically, at the same time the RCMP is sponsoring a campaign "thumbs down for hitchhiking". The Committee can only conclude that in certain respects the situation has not improved, but rather deteriorated due to the non-implementation of recommendations intended to offer protection to Aboriginal women and girls.

107. Recommendations from the Highway of Tears Symposium related to establishing communication with victims' families and the continuing official investigation into the Aboriginal community's assertions into actual number of missing women are being addressed under the remit of Project E-PANA established to review unsolved murders linked to Highway 16. Representatives of the RCMP and government officials, however, informed the designated experts that law enforcement officials are not always in a position to share details on the progress of their investigations, as these may be negatively affected by the release of such information.

108. The Committee notes that in response to a follow-up question subsequent to the country visit, the State party indicated that the Federal/Provincial/Territorial Ministers responsible for Justice approved, on 14 November 2013, the release of a report which provides a summary of the actions taken to implement the 52 recommendations of the

report of the Ministry of Justice's Coordinating Committee of Senior Officials, Missing Women Working group. Information in this report is provided in relation to only four of the 52 recommendations and provides examples of some of the actions taken in various provinces. The Committee, however, remains concerned that implementation even of these selected recommendations seems less than coordinated and is constrained by provincial autonomy which means that implementation is dependent on provincial interest and political will rather than being mandatory.

109. Reportedly with the province currently undergoing a justice reform process, progress has been very limited in terms of concrete measures to enhance the responsiveness of the justice system for cases of missing persons and no detailed Government action is outlined in the Status Report on the implementation of the Missing Women Commission of Inquiry Report "Forsaken". The Honourable Steven Point, who was appointed to follow the implementation of the recommendations and was supported by the Aboriginal community, resigned as Chair of the Advisory Committee on the Safety and Security of Vulnerable Women in May 2013 and has not yet been replaced. Reportedly, there is also a lack of consultation and cooperation between the Ministry of Aboriginal Relations and Reconciliation and the Minister's Advisory Council on Aboriginal Women. However, the State party reported that, since 2013, steps were taken to improve the relationship between these parties.

110. Given the Committee's observations with regard to the status of implementation of the myriad evidence-based solutions highlighted in these various governmental and non-governmental reports on missing and murdered women, the Committee remains concerned that in the absence of adequate resources and political will to support mandatory implementation based on a strategic integrated plan of action, outcomes will be, at best, piecemeal and fragmentary. Further, based on the fact that so few recommendations are reported on, the Committee can only assume that the concern expressed by a number of stakeholders about the inertia displayed by the authorities in relation to implementation of critical recommendations from various studies, symposia and inquiries, is justified.

2. Prevention of violence

a) Addressing socio-economic conditions of Aboriginal women

111. Data on the social and economic condition of Aboriginal women and girls extracted from Statistics Canada 2011 confirm that discrimination on socio-economic indicators persists against Aboriginal women. Of significance are the following:

a. 37% First Nations females (off-reserve) and 23% Metis and Inuit females live in poverty which is double the rate for non-Aboriginal women;

b. 18% of Aboriginal women 15+ are single parents compared with 8% of Non-Aboriginal women and have larger families;

c. 44% of women and girls living on reserves live in homes that need repair;

d. 31% of Inuit women/girls live in crowded houses compared with 3% of non-Aboriginal females;

e. 35% of Aboriginal women aged 26+ have not graduated from high school;

f. Only 9% of Aboriginal women aged 25+ have a University degree compared with 20% of non-Aboriginal women;

g. 13.5% of Aboriginal women are unemployed compared with 6.4% of non-Aboriginal women;

h. Poverty rate for indigenous children is 40% which is twice the overall rate for children in Canada;

i. Aboriginal children are 10 times more likely to be in state care than non-Aboriginal children which is a higher proportion than during the time of residential schools;

j. Aboriginal women/girls are disproportionately criminalized and incarcerated - the Aboriginal population is 3.8% of the total population - yet 34% of incarcerated women are Aboriginal and over the last 10 years the number of federally sentenced Aboriginal women in custody has increased by 86% compared with 27% for men over same period.

112. The Committee notes that the social and economic marginalization of Aboriginal women is reflected in the high incidence of poverty as evidenced in inadequate housing and homelessness, lack of education and employment opportunities, transience and migration, drug and substance abuse, as well as over-representation of Aboriginal children in the child welfare system. The Committee considers that, in the social, economic and geographical context of the State party, disadvantaged socio-economic conditions and lack of social services increase women's vulnerability to violence, as a lack of access to such resources reduces the choices of women in situations of risk and prevents them from escaping violence.

113. The Committee is particularly concerned about the continuing discrimination, originally evident in the residential school system, and now perpetuated in child welfare practices where Aboriginal children are removed from their families and often placed in the care of non-Aboriginal foster families. The experts were informed in British Colombia that Aboriginal women are at greater risk than non-Aboriginal women of having their children removed by authorities under child protection legislation because of the interpretation made by the authorities, in practice, of the definition of neglect, despite the existence of guiding principles on the interpretation of sections 2 and 3 of the British Columbia Child, Family and Community Service Act indicating that the Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations. The experts were also informed that women who were victims of violence often avoided seeking help from health or social service organizations for fear that their children would be apprehended by child welfare authorities. The experts were also informed by civil society organisations that there are more First Nations children in child welfare care today than at the height of residential schools, by a factor of three.

114. The Committee notes the State party's response to the request for clarification of the interpretation and scope of the definition of 'neglect' and ways in which removal of children negatively impacts welfare benefits for the parents and makes it difficult for them to regain economic independence and so be in a position to reclaim their children. The response indicates that provinces and territories have the legislative mandate for all children in care in their jurisdiction and there are therefore variations in the interpretation and definition of neglect. Relevant information was provided for each jurisdiction.

115. With respect to the question of women's poverty and its relationship to removal of children from the family home, the Committee was informed in Yukon that, in general, where a family is in receipt of income assistance and their child is removed from the parental home on a short term basis (1 to 2 years or less), these factors can have a material or tangible impact on level of benefits received from the State party. It was explained that some provincial income assistance authorities determine if there is a plan in place for the child to return home within a specified time frame. If so, the authorities can exercise discretion in deferring or annulling the need to reduce family benefits. Where this happens, it allows the family to maintain the child's primary place of residence and to prevent the family from experiencing financial shocks. Based on this information, the Committee draws two inferences: a) where removal of a child is on a short term basis, continuation of the level of benefit is not guaranteed; and b) where removal of a child is on a medium or long-term basis, there are always tangible impacts on the benefit level. These views were

confirmed by information received during the country visit. In view of the above, the Committee considers that Aboriginal women's reluctance to seek help from authorities when they are victims of violence is partly due to the discrimination they face during the placement of their children in foster care.

116. The Committee considers as an important and crucial step the State party's acknowledgement that violence against Aboriginal women and girls is linked to socio-economic disadvantage and takes note of the various measures taken by the State party to improve the socio-economic status of the Aboriginal community, in particular in the fields of education, support to family and children, health, safety and housing.

117. In spite of these initiatives, both governmental and other independent sources, however, indicate that these measures have not gone far enough to eliminate the socio-economic disadvantage of Aboriginal people. A 2013 brief prepared by the BC Ministry of Aboriginal Relations and Reconciliation for the CEDAW Committee, acknowledged that: 'the existing education, employment and income gap between Aboriginal and non-Aboriginal Canadians goes some way to explaining the high levels of domestic abuse experienced by Aboriginal women and girls. Poverty is an overarching factor that forces women into homelessness and increased vulnerability to violence".

118. Information provided by the State party suggests that addressing these disparities is compounded by the decentralized structure of government where, in many respects, provinces and territories have authority and control over their respective jurisdictions as, for example, in the case of children in care. The Committee notes that, nonetheless, it is stated that the Federal government works closely with provinces and territories to address the economic security of Aboriginal families. This assurance, however, is negated by the fact that when more specific information is provided as, for example, in relation to preventing homelessness and improving housing options and other opportunities for Aboriginal people, the outcomes of projects are not focused in relation to this specific population. Instead, reference is made to the creation of 4,500 shelter beds, placing 38,000 people in more stable housing, helping almost 10,800 Canadians pursue education and training opportunities and assisting more than 7,000 people find part-time jobs and another 7,500 to find full-time jobs.

119. The Committee therefore maintains that as purported by informants, initiatives to address the socio-economic condition of Aboriginal people and, in particular, Aboriginal women, are not sharply focused in relation to their needs and posits that unless urgent attention is given to addressing the root cause of Aboriginal women's vulnerability to violence, the problem will persist unabated.

b) Addressing vulnerability to prostitution and trafficking

120. The Committee notes that legal provisions are in place, which provide for administrative fines and/or imprisonment on the demand side of prostitution, and considers that such measures will help to decrease the demand for prostitution. The Committee is concerned, however, that the criminalization of women engaged in prostitution further increases their vulnerability to violence.

121. The Committee notes that currently the Government of Canada is reviewing a decision taken by the Supreme Court of Canada (SCC) which declares Section 213 of the Criminal Code of Canada invalid. Section 213 of the Criminal Code, which prohibits communicating in a public place for the purpose of engaging in prostitution or of obtaining sexual services of a prostitute, was judged inconsistent with Section 7 of the Canadian Charter of Rights and Freedoms due to their negative impact on prostitutes' safety. The Committee further notes that the Supreme Court of Canada suspended the declaration of invalidity for 12 months to give the Parliament an opportunity to review the situation and enact new provisions if seen as necessary. The Committee considers this to be a significant step in the right direction and expects that the review of the decision will result in the

exploration of possible options to ensure that the criminal law continues to address the harms that flow to those engaged in prostitution.

122. While noting the measures taken by the Government to address issues related to women engaged in prostitution generally as outlined in the responses to follow-up questions subsequent to the country visit, the Committee regrets the absence of comprehensive measures focusing on the disproportionately high number of Aboriginal women engaged in prostitution; and is of the opinion that the Government's failure to alleviate Aboriginal women's poverty and to address and remedy the disadvantaged social and economic status of Aboriginal women significantly contributes to perpetuating their vulnerability to prostitution and its negative effects.

123. The Committee notes that the State party has taken significant steps to improve its legislative and institutional framework regarding trafficking, both at federal and provincial levels. However, although the vulnerability of Aboriginal women and girls to trafficking has been fully recognized by the State party, the Committee considers that insufficient efforts have been made to address such vulnerabilities.

124. In particular, the Committee notes that the National Action Plan on Human Trafficking is limited to preventive measures in relation to Aboriginal women. While it envisages information gathering on the causes of trafficking of Aboriginal women and youth, it does not provide for specific measures for protection and assistance to Aboriginal victims and for the detection, investigation and prosecution of offenders as for example in the chart identifying persons vulnerable to human trafficking. Whereas female immigrants aged 15 to 21 are specifically highlighted, Aboriginal women are not isolated as a specific at-risk group. Persistent flaws in the identification of victims of human trafficking among Aboriginal women and girls, therefore, continue to hamper effective protection and prosecution.

125. The Committee considers that the focus of the research currently undertaken and the approach taken by the State party in identifying trends in trafficking of Aboriginal women are too narrow in scope and only focus on aspects related to trafficking of individuals by family members, thereby unjustifiably omitting trafficking carried out by perpetrators from outside the community. The Committee draws the attention of the State party to the highly stigmatizing effect for Aboriginal people of such one-sided research.

126. In response to the allegations concerning women disappearing on ships, except for one instance, the State party representatives repeatedly stated that there was no link between trafficking and the disappearance and murder of Aboriginal women, that the RCMP did not find any evidence of Aboriginal women being trafficked on ships, and that, due to the lack of formal complaints, no studies had been conducted to explore possible links between these issues. However, during the visit, information was brought to the attention of the designated experts by First Nations Chiefs, as well as civil society organizations and Aboriginal advocacy groups, university researchers and Members of Parliament regarding the disappearance of Aboriginal women, trafficked mainly for purposes of sexual exploitation, on ships crossing borders or provincial boundaries. The Committee, however, was assured that the State party was giving attention to the issue.

127. The Committee is of the view that the possible link between missing and murdered women and trafficking has neither been sufficiently researched nor investigated. Further, it observes that the lack of research and data on the wider issue of human trafficking among Aboriginal women and girls remains a challenge for developing policies and police responses that are effective.

3. The root causes of discrimination

128. Several studies and reports made available to the Committee by the State party and civil society organizations also underline the fact that the internalization of patriarchal colonial structures has resulted in circumstances where Aboriginal women often do not enjoy the same level of rights and protection as Aboriginal men and non-Aboriginal women and men. The Committee regrets that discriminatory stereotypes of Aboriginal men and women that informed colonial and post-colonial Aboriginal policies are reportedly still widely evident within contemporary mainstream Canadian society.

129. The Committee notes the important symbolic impact of the apology extended by the State party to the members of the Aboriginal community and the significant work of the Truth and Reconciliation Commission. However, the Committee considers that the legacy of colonization, the development of post-colonial policies which embodied institutionalized discrimination against and stigmatization of Aboriginal people, such as the residential school system, the adverse impact of gender inequality embedded in the Indian Act, and persistent tensions resulting from land claims and treaty rights, are all factors that cannot be separated from the current violence against Aboriginal women and their continued and increased vulnerability to such violence.

130. It was very evident to the Committee that the lasting consequences of sex and race based discrimination, perpetrated against the Aboriginal community during the colonial and post-colonial periods, have been significant contributory factors to the disproportionately high levels of violence, inflicted by both state and non-state actors, on Aboriginal women as well as the way in which this violence has been, for the most part, treated with impunity. This is confirmed by the following statement made by the Assembly of Manitoba Chiefs in their October 2013 written submission to the Committee on Missing and Murdered Indigenous Women and Girls: “Aboriginal women and their children suffer tremendously as victims in contemporary Canadian society. They are the victims of racism, sexism and of unconscionable levels of domestic violence. The justice system has done little to protect them from any of these assaults.”

131. The Committee notes the State party’s acknowledgment that the consequences of these historical root causes have resulted in a deep trauma and high levels of distrust among the Aboriginal community towards the authorities and, consequently, in tense and challenging relationships. While acknowledging that it will take time to heal these historical wounds, the Committee notes that the nature of contemporary relationships resulting from the colonial and post-colonial context continues to considerably delay progress in addressing the situation of violence, despite the State party’s efforts in this regard.

4. Issues of law enforcement

a) Police response

132. The British Colombia Missing and Murdered Women Inquiry identified seven critical police failures in relation to the handling of cases, vis-à-vis: poor report taking and follow-up of reports on missing women; faulty risk analysis and risk assessment; inadequate proactive strategy to prevent further harm to women in the Downtown East Side; failure to consider and properly pursue all investigative strategies; failure to follow major case management practices and policies; failure to address cross-jurisdictional issues and ineffective coordination between police forces and agencies; and failure of internal review and external accountability mechanisms.

133. The designated experts were informed that investigations of missing persons and unidentified remains by the RCMP are now guided by policies and a Best Practices document. These directives address, inter alia, report intake, jurisdiction, risk assessment and response, investigative steps/priorities, special procedures for vulnerable and Aboriginal missing persons, structured links with other police agencies, including a

Coroner liaison, sex worker coordinator, Aboriginal policing officer, and interactions with families and communities (including Aboriginal communities).

134. The Committee acknowledges the important steps taken by the State party to establish integrated police task forces to investigate outstanding cases of missing and murdered women in different areas of the country. Project E-PANA, KARE and Devote have formed an efficient approach to the policing of these cases.

135. In spite of the existence of these task forces and guidelines, during interviews with government officials, Aboriginal organizations and authorities, independent bodies and family members in the provinces and territories visited, it was evident that many of the failures identified in the British Columbia Inquiry persist and are manifested in a variety of ways in police interactions with Aboriginal women and their families. In many instances, accounts provided by families of victims, non-governmental organisations providing victim services as well as academics, confirmed these failures, as detailed below, but their accounts were diametrically opposed to those provided by government officials and police who claimed that in responding to victims of violence and/or their families, they adhered to guidelines and Best Practices.

136. Based on information received from RCMP representatives, failure to abide by national and local best practices/policies may result in sanctions only in cases of violations of the Code of Conduct or of criminal laws, depending on the act or omission. The Committee, therefore, is concerned that the practical usefulness and impact of the Best Practices is limited because their implementation is voluntary, sanctions only apply in extreme situations and there is no oversight mechanism to ensure their implementation.

137. In spite of the fact that RCMP Best Practices state that police agencies should not treat certain types of missing persons, such as repeat runaways or persons with high risk lifestyles, differently at the start of an investigation, the designated experts were informed of poor report taking by some police officers who at times assumed that disappearances of Aboriginal women were regarded as them being ‘runaways’ or was due to the fact that they engaged in so-called “high-risk lifestyles”.

b) Distrust of Police by Aboriginal women

138. Interviews conducted with all stakeholders revealed that Aboriginal women are reluctant to report acts of violence to the police, mainly due to police behaviour and bias. Victims also reported that Aboriginal women are regularly profiled by police and over-policed, which results in high rates of criminalization. Aboriginal women, service providers, civil society actors and Aboriginal leaders pointed to a persistent lack of cultural awareness and sensitivity to Aboriginal issues among the police. They indicated that police bias, reflected in the use of demeaning or derogatory language towards Aboriginal women and in stereotypical portrayals of Aboriginal women as prostitutes, transient or runaways and having high-risk life styles, is still rampant. They further indicated that their decision whether or not to report an incident continues to be affected by the anticipated police reaction and by doubts as to whether the police will take their complaints seriously.

139. It was reported that as a result of this entrenched stereotyping, calls to the police or visits to a police station by women seeking help with violence were frequently met with scepticism and victim-blaming questions and comments. One Aboriginal woman interviewed claimed that when she attended a police detachment to report being raped, the response of the police officer was that it was impossible for her to be the victim of such an assault given that she was a prostitute – a glaring example of institutionalized stereotyping and discrimination. During interviews with Aboriginal women, the designated experts were, therefore, told that a large number of members of the Aboriginal community neither rely on nor trust the police to effectively investigate cases involving Aboriginal women. Aboriginal women engaged in prostitution and those living on reserves indicated that they do not believe that the police can provide them with the protection they require.

140. This type of institutionalised stereotyping is also embedded in the risk assessment practices carried out in a number of provinces where, when reports of a missing person are submitted, assessments are made based on stereotypes which may lead to erroneous assumptions. For example in Prince George, if "the person is involved in the sex trade, hitchhiking, gambling and/or transient lifestyle", "the matter requires immediate review". On the other hand, it can be presumed that, if the complaint is made by an Aboriginal woman or girl who does not immediately fit this profile, the response may be less than immediate. The Committee is concerned about the labelling of individuals based on discriminatory stereotyping, particularly in relation to matters as critical as instances of violence against Aboriginal women and girls.

141. Similarly, although the Best Practices document states that a police agency should not turn away a report of a missing person on the basis of time elapsed since they have gone missing, the view that a 24- to 48-hour waiting period must lapse before the police could accept a report on a missing person was very prevalent among family members interviewed. The 2010 and 2012 reports of the Missing Women Working Group of Senior Officials established by the Ministry of Justice, in fact, acknowledged that insufficient information had been given to Aboriginal communities on reporting practices for missing persons. In the case of British Colombia, to ease the reporting process in cases of missing persons, the Missing Women Commission of Inquiry recommended the establishment of a provincial phone line to report cases of missing and murdered women.

142. The main issue that emerged was a continuing distrust of the police on the part of Aboriginal women and their families and a real sense of profound fear of police retaliation if they complain or make reports of violence. Family members and civil society organizations, therefore, informed the designated experts of the existence of barriers to reporting a missing person due to: a general lack of trust in the police; the conduct of police officers who treated family members and other persons reporting cases with indifference or hostility; and the limited knowledge among the Aboriginal community of how to file a report.

143. Families of murdered Aboriginal women also reported failure of the police to treat cases of missing Aboriginal women in an urgent manner and to carry out adequate investigations as well as the improper characterization of deaths as suicides or accidental deaths, and an increased use of police discretion in the collection of evidence during the investigation phase.

144. The Committee is therefore concerned about the limited efficiency of police protocols in investigating cases of missing and murdered Aboriginal women (such as RCMP Best Practices) due to their non-binding nature and the lack of oversight and enforcement mechanisms. The Committee is also concerned that these protocols were not developed in sufficient consultation with the Aboriginal community. The Committee notes that during interviews with RCMP representatives and police officers, many responses given to the designated experts pointed to a lack of awareness of the persisting barriers faced by Aboriginal women when seeking to access the justice system.

145. Despite the State party's acknowledgment of the necessity to foster constructive relationships with First Nations leaders, communities and citizens, the Committee considers that RCMP police officers do not receive adequate culturally sensitive training to respond effectively and competently to violence against Aboriginal women and girls. During the visit, RCMP officials stressed that training happens "on the job" on the ground, given that officers are detached to a given community for a period of two years. Regarding the actual provision of culturally sensitive training workshops for police officers, even if the attendance rates are reported to be high, these courses are optional and most of them are online. However, online courses have only limited impact compared to in-class courses and are not systematic throughout a police officer's career. Effective training is necessary to ensure that acts of racism and sexism are barred from day to day policing, especially as

regards officers detached in community areas and reserves, given the powers and discretion that they yield in addressing acts of violence.

146. Despite the State party's comprehensive legal framework, the well-established infrastructure of police services and courts, and constitutional guarantees of equality and non-discrimination, the Committee notes that Aboriginal women and girls continue to lack confidence in law enforcement agencies, notably in their ability to effectively respond to acts of violence. The Committee considers that insufficient efforts have been deployed by the State party to encourage women to report acts of violence and to address the culture of prevailing distrust of the police. It also notes that the low number of women and Aboriginal representatives within the RCMP inhibits progress in building such trust and that there is little interest on their part to join the RCMP or other police forces.

147. The Committee finds that the historically rooted fractured relationship of Aboriginal women with all levels of the justice system and the lack of adequate measures taken to address the over-representation of Aboriginal women in contact with the justice system, whether as victims or as offenders, will necessarily delay any progress in building trust. The Committee considers that the response of the justice system to the high rates of violence affecting Aboriginal women, as a disadvantaged group and a minority of the population, offers only insufficient protection.

c) Fragmented inter-jurisdictional communication

148. Despite ongoing efforts to develop police standards for RCMP detachments in all provinces, the Committee notes that cross-jurisdictional issues continue to seriously impede the reporting of cases of missing or murdered Aboriginal women, as well as effective information-sharing between the different police jurisdictions.

149. While the RCMP provides services to a large number of Aboriginal communities, there are about 200 other law enforcement agencies providing municipal and provincial policing services across Canada.[10] Representatives of Aboriginal women's organizations denounced the absence of operating procedures for dealing with cross-jurisdiction information sharing and investigations when women are reported missing. In British Columbia, the Missing Women Commission of Inquiry considered that the lack of institutionalized mechanisms for inter-jurisdictional communication impeded the effective resolution of some cases of missing and murdered Aboriginal women.

150. The Committee notes that in response to questions raised about cross-jurisdictional issues in follow-up questions subsequent to the country visit, the State party informed that a recent enhancement to the RCMP's National Missing Persons policy directs that a missing person complaint will be accepted and acted upon by any detachment, regardless of jurisdiction. Despite this injunction, during interviews with members of the civil society in a particular territory, the designated experts were informed that police refused to receive missing person reports when family members reported outside their community of residence or outside the jurisdiction where the person went missing. This finding illustrates that there is no national missing person strategy which could provide a foundation for a standardized organizational approach to a missing person investigation.

d) Absence of independent police complaints mechanism

151. The Human Rights Watch Report, 'Those Who Take us Away', released in 2013 catalogues a history of sexual, physical and verbal abuse of Aboriginal women and girls by the criminal justice system (police, lawyers and judges) which has left behind a legacy of fear and mistrust of law enforcement agencies and officials. Added to this, those who are brave enough to come forward to make complaints, especially Aboriginal women and girls,

[10] The RCMP covers 70 % of the territory of the State party.

to borrow from the MWCI Report, are treated like 'nobodies' by officials, a claim which was strongly refuted during interviews with the VPD and the RCMP. It is even alleged that on release of Human Rights Watch Report, the Commissioner of the RCMP sent an email to 29 000 members of the RCMP noting the reports of sexual harassment and criminal violence by the force and telling them 'My message to you today is – don't be worried about it, I've got your back', an allegation which was not explicitly denied when raised in the interviews with the authorities.

152. The Committee was informed that in response to concerns raised by the public, contract jurisdictions, RCMP employees, Parliamentary committees, the Commission for Public Complaints Against the RCMP and several major reports, all of which called for more effective review of the RCMP and more timely handling of issues related to the conduct of police officers, Canada enacted legislative amendments to the RCMP Act (Bill C-42), which received royal assent in Parliament in June 2013. This created a new Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (CRCC) to replace the existing Commission for Public Complaints Against the RCMP (CPC) and providing it with enhanced powers.

153. The Committee notes that while the new law grants the CRCC certain expanded investigative powers, it is concerned that functional issues may undermine the efficiency of the Commission and strain public confidence, such as limitations on third party complaints, self-initiated review powers, as well as the non-binding nature of recommendations. Furthermore, the Act fails to remove the obligation to report to the Minister of Public Safety, thereby calling into question the true autonomy and authority of the CRCC.

154. Further, the Committee notes that the list of the ten most common complaints issued against police over the past few years provided in the January 2014 submission of the State party does not include sexual abuse, which conceivably, could be lower on the list of complaints. When asked by the Committee if the kinds of incidents that the CRCC is mandated to investigate include sexual harassment, the State party's response was limited to references to workplace harassment within the RCMP but not to sexual harassment directed against the public and, particularly, against Aboriginal women, the burden of this inquiry. The Committee also notes that the mandate of the British Columbia Independent Investigations Office (IIO) is also too narrow, as it does not cover sexual offences.

155. Information supplied by the State party indicated that based on the number of allegations of sexual misconduct related to policing in Northern British Colombia outlined in the Human Rights Watch Report in May 2013, the Commission for Public Complaints (CPC) against the RCMP launched a public-interest investigation into these allegations. On the other hand, information included in the June 2013 submission from the Native Women's Association of Canada (NWAC) indicates that besides the Prime Minister stating in Parliament that anyone aware of serious allegations involving criminal activity should give the information to the appropriate police, he also referred the matter to the CPC. The Committee notes that the CPC is now replaced by the CRCC and, although no information has been provided on the progress of the investigation, the Committee expects that it is still under active consideration and will not only be in the 'public-interest' but, if allegations are substantiated, will result in individuals being held accountable and in concrete recommendations to protect Aboriginal women and girls from further victimization by the State.

156. During interviews, concerns surfaced about the extent to which the CRCC would function more effectively as an independent civilian body to investigate cases of police misconduct. Responses by the State party to questions raised in this regard subsequent to the country visit, indicate that where a provincial or federal regime for independent external investigation has not been established or where it is not feasible or appropriate for the RCMP to identify an external law enforcement agency or other duly-authorised investigative agency to conduct an investigation, a RCMP Division, other than the one

where the incident occurred, will conduct the investigation. The Committee is therefore concerned that, as with the CPC, the possibility still exists for the investigation of a RCMP police complaint to be carried out by its own body.

157. Concerns about the effectiveness and independence of mechanisms to address complaints against the police emerged very clearly in discussions with various stakeholders. Testimonies heard by the designated experts indicate that incidents involving police officers are not taken sufficiently seriously when reported. The prevailing distrust among Aboriginal women is compounded by reports that the oversight bodies to investigate and punish police misconduct, abuse of authority and any other act contrary to police ethics, are not sufficiently independent and effective. There was widespread consensus among civil society actors and academia on the necessity to further improve the civilian oversight regime for the RCMP to ensure that its actions are subject to stricter public scrutiny. Further, during the visit, it emerged that Aboriginal women experience difficulties in accessing and understanding which mechanisms are overseeing which police forces.

158. While acknowledging that the State party has strengthened the independence of its accountability mechanisms regarding police conduct by the mandatory appointment of third party observers within the CRCC, the Committee notes the remaining lack of independence, and the limited powers and mandate of this new Commission. The insufficiency of guarantees of independence is reflected by the fact that investigations on RCMP officers' misconduct can be carried out by the RCMP itself. The Committee is, therefore, of the opinion that given the complexity and multitude of police jurisdictions, the State party has failed to ensure that complaint procedures to challenge police conduct are available and easily accessible for Aboriginal women and girls. The Committee considers that the police cannot effectively protect Aboriginal women without a more robust complaints mechanism, as an essential component of ensuring trust.

e) Deficiencies in data collection

159. According to Statistics Canada, existing data from the Homicide Survey undercount the true extent of homicides of Aboriginal people given that the Aboriginal identity of many homicide victims is not recorded. Statistics Canada further indicated that half of the police services, including the RCMP, do not report information on Aboriginal identity of homicide victims despite the Homicide Survey's requirement to do so. Statistics Canada also stated that the limitations on the ability of the police to indicate the Aboriginal identity of victims include conflicts with privacy legislation and different policing policies in the various jurisdictions. This was confirmed in the State party's 2013 response to the UPR recommendations where it is stated that race-based statistics are not recorded in a systematic manner across Canada's criminal justice system due to operational, methodological, legal and privacy concerns. Another limitation brought to the attention of the designated experts during interviews with police representatives is that police officers feel uncomfortable asking individuals about their Aboriginal identity.

160. The undercounting of homicides of Aboriginal women is underscored by data on 'Female victims of homicide by Aboriginal status, Canada provinces and territories, 2003 to 2011' submitted by the State party in January 2014. Of the 1,496 victims, only 116 (8%) were recorded as being Aboriginal females while 654 (44%) were recorded as Non-Aboriginal females. On the other hand, the status of 726 (49%) of the victims was recorded as Unknown/Not Collected/Not Reported. As previously indicated, this group represents individuals who were reluctant to disclose their status or, from whom information on status was not solicited by the police. Whatever the case, more than half (57%) of the 1,496 victims are not classified as Non-Aboriginal, partly due to the limitations on the ability of the police to indicate the Aboriginal identity of victims, and, according to civil society organizations, are most likely Aboriginal. These data corroborate the observation made by the State party that self-reported violent victimization among Aboriginal women is three times higher than that reported by Non-Aboriginal women.

161. The Committee, however, was informed of the National Centre for Missing Persons and Unidentified Remains (NCMPUR) established by the State Party in 2011, run by the RCMP. The NCMPUR personnel include an Aboriginal police officer linked to the RCMP's National Aboriginal Policing Services in order to ensure a focus on the specific issue of missing Aboriginal persons. It was envisaged that the NCMPUR would create the first national database for missing children/persons and unidentified remains (MC/PUR) accessible across jurisdictions by the end of 2013, but its development is still ongoing. As previously indicated, the Committee is aware that, in addition, other task forces have been established in provinces and in one territory to investigate outstanding cases of missing and murdered women. The Committee is therefore concerned of the extent to which there is an adequate interface between the NCMPUR agency and the provincial projects as well as overall coordination of this critically vital activity.

162. Further, the Committee notes that, in May 2011, in an effort to overcome obstacles in capturing accurate data, the Canadian Police Information Centre (CPIC), accessible to all police jurisdictions, added new fields to the database, which include Aboriginal identity in order to allow the police to better record such information. CPIC is a national information-sharing system that links criminal justice and law enforcement partners across Canada and internationally, in existence since 1972. ViCLAS is another important database, namely a national computer program capturing information on homicides, sexual assaults, abductions and other violent crimes, which links violent crime investigations through the collation and comparison of data to identify serial crimes. All law enforcement agencies in Canada can contribute data to ViCLAS.

163. In addition, the RCMP's National Aboriginal Policing Services led the RCMP in a file review across RCMP jurisdictions in February 2013. Each RCMP Division conducted a review of cases on missing persons from 1940 to 2013. RCMP also conducted a review of the number of murdered Aboriginal women, from 1932 to 2013, which validated 327 homicides, 98 (30%) of them being still under investigation. The State party noted, however, that the RCMP solved rate for Aboriginal female homicides for the period 2006-2012 is 82%, while it is 88% for non-Aboriginal women for the same period. The RCMP indicated in its 2014 report that for Aboriginal victims in the sex trade, the solve rate was 60 percent. Yet, it is to be noted that the State party itself recalled that due to the police's limited ability to identify victims as Aboriginal, these numbers are neither definitive nor accurate.

164. Statistics Canada documented the inadequacy of official data that identifies the victims and perpetrators of murders and disappearances of Aboriginal women and girls by race. The absence of reliable statistics on the exact number of missing and murdered Aboriginal women and girls and the lack of accuracy in the identification of victims as Aboriginal is acknowledged by the State party.

165. The Committee was also informed that Statistics Canada collects self-reported victimization data through the General Social Survey (GSS) on Victimization which captures the number of incidents of violence whether or not it was reported to the police. According to the 2009 GSS, the rate of self-reported violent victimization against Aboriginal women (15 years and over) in the provinces was about 2.5 times higher than the rate for non-Aboriginal women (279 versus 106 per 1,000 population); these rates include both spousal and non-spousal violence. In addition Aboriginal people reported sexual assault incidents at a rate of 71 incidents per 1,000 people, compared to 23 per 1,000 non-Aboriginal people; however, due to small counts, it is not feasible to break incidents of sexual assaults down by sex.

166. The Committee notes, in particular, serious gaps in the manner the police records and shares information, which results in the lack of a comprehensive picture of the actual scale of violence against Aboriginal women, in particular regarding cases of missing and murdered Aboriginal women. Despite the efforts recently deployed by the State party in

this regard, the Committee considers that the inadequacy and lack of accurate data to identify the victims and perpetrators of murders and disappearances of Aboriginal women and girls, disaggregated by race and ethnicity, over a long period of time, impaired the development of effective strategies and solutions within the criminal justice system.

5. Restricted access to justice

167. The Committee notes that the Government of Canada views access to justice as fundamental to an effective and efficient justice system and welcomes the information provided on initiatives intended to increase access to legal aid and justice in various provinces and territories which, except in the case of British Colombia and Ontario, do not necessarily target the needs of Aboriginal women.

168. Numerous testimonies heard from civil society representatives and families, during the inquiry, confirmed these observations and repeatedly pointed to the fact that the State party's justice and law enforcement system is not sufficiently responsive to the particular needs of Aboriginal women, whether as victims of violence or as offenders. During interviews with RCMP representatives and police officers, many responses given to the designated experts pointed to a lack of awareness of the persisting barriers faced by Aboriginal women when seeking access to the justice system. This is confirmed by the Committee on the Elimination of Racial Discrimination, which expressed concern that members of the Aboriginal community continue to face obstacles in accessing justice, despite the existence of certain access to justice programmes at the provincial and territorial levels.

169. Several reports have highlighted substantial shortcomings on the part of the judicial system with regard to Aboriginal women, such as lack of communication and responsiveness, limited awareness and understanding of their rights, discriminatory treatment of Aboriginal women victims and witnesses, insufficient enforcement of criminal laws on hate crimes, and low prosecution rates regarding crimes perpetrated against Aboriginal women.

170. The Committee further considers that there was insufficient consultation with representatives of Aboriginal communities during the preparation of programmes to combat violence against Aboriginal women and during the drafting of legislation, resulting in limited co-ownership by those communities of the measures taken by the State party. In this regard, a particular concern surfaced in relation to the 'Family Homes on Reserves and Matrimonial Interests or Rights Act' passed in September 2013, which provides for emergency protection orders that grant temporary exclusive occupation of the family home for Aboriginal women who are victims of domestic violence. Representatives of the Aboriginal community, however, told the designated experts that they were concerned about the lack of adequate consultation during the drafting of the Bill.

171. The Committee considers that the disproportionate levels of violence experienced by Aboriginal women and the numerous forms of violence that they face call for specific policies, measures and programmes in order to ensure that the justice system as a whole is capable of adequately responding to such situations. In addition to the economic, social and cultural situation described above, the historical distrust of the Aboriginal community against the police and the justice system, as well as perceived racism and discrimination within the State party's institutions, create further barriers for Aboriginal women to access justice.

172. Based on the information before it, the Committee considers that the State party has taken insufficient measures to comprehensively address the challenges faced by Aboriginal women in accessing justice and to combat the discrimination they face in the justice system. The State party has placed an insufficient focus on addressing the underlying causes that prevent Aboriginal women from accessing justice on an equal basis with men and with non-Aboriginal women. While noting the recently increasing efforts by the State party to

address these problems, the Committee regrets that such efforts remain fragmented and is of the view that the magnitude of the required changes cannot be achieved by piecemeal reforms of existing programmes and services.

6. Over-representation of Aboriginal women in prison population

173. Another clear instance of racial and sex-based stereotyping is reflected in the over-representation of Aboriginal women in the prison population. Information and submissions received have described the strained relationship between Aboriginal people and the justice and penitentiary system. The Supreme Court of Canada has taken judicial notice of the widespread issues of systemic discrimination, which result in an over-representation of Aboriginal people in the justice system and in prisons.

174. The over-representation of Aboriginal women among the prison population is recognized by the State party, which confirms that incarceration rates of Aboriginal women are disproportionately high (34 percent of women in federal penitentiaries are Aboriginal, whereas they represent only four percent of the total female population in the State party). The Canadian Human Rights Commission denounced the fact that Aboriginal women who are incarcerated in federal prisons are dealing with "systemic discrimination arising from their gender and indigenous identity". Both the Canadian Human Rights Commission and the Office of the Correctional Investigator mentioned the high security classification of Aboriginal women in the penitentiary system, undermining their access to rehabilitation programme options and ultimately their successful reintegration into the community. It was also reported that Aboriginal women are less likely to be sentenced to alternative measures to incarceration.

7. Inadequacy of victim services

175. The information received by the designated experts points to a significant variation between the services provided to victims in the different provinces and thus a lack of uniform national standards, despite the existence of the Canadian Statement of Basic Principles of Justice for Victims of Crime, signed by Federal-Provincial-Territorial Ministers of Justice in 1998, and reiterated in 2003. It also indicates a lack of coordination among the various agencies from which women may seek help; insufficient referral by the police to existing victim or community services; limited availability of appropriate legal assistance in many communities; and inadequacy of services to support Aboriginal women's specific needs, including trauma support; insufficient awareness among Aboriginal communities about the full range of protective measures and their limited participation in criminal proceedings.

176. Although the Aboriginal Affairs and Northern Development Canada (AANDC), as part of its Family Violence Prevention programme, has provided operational funding for 41 shelters in First Nations Communities, the Special Rapporteur on adequate housing, in his 2009 report on his mission to Canada, noted the lack of adequate shelters for Aboriginal women who are victims of violence. Civil society organizations stressed the absence of emergency shelters or transitional homes for women in a majority of the 2,500 reserves in the State party, such as in Long Point First Nation of Quebec where women must travel 100km to the nearest shelter. Civil society organizations further highlighted the gravity of the situation in northern and rural communities where Aboriginal women and girls are far from the urban centres where those services are concentrated. In Yukon, the designated experts were informed about the absence of programmes specifically targeting violence against Aboriginal women, as well as the absence of state-run shelters. All shelters are currently run by non-governmental organizations.

177. The call of the Federal Ombudsman for Victims of Crime, in June 2013, for a Victims Rights Bill reflects the need for nationwide consistent enforceable rights and minimum standards for all victims. The lack of nationwide consistency in victim services, programmes and compensation across provinces and territories, is considered by the

Ombudsman as particularly problematic in cases where the crime occurred in a province/territory other than the one where the victim resides. She also stressed that access to restitution and enforcement of restitution orders was limited. It is currently estimated that victims bear 83 percent of the total costs arising from the consequences of the crimes against them in the State party. These challenges have a detrimental impact on access to victim services for Aboriginal women as a disadvantaged group.

178. The Committee is concerned that the difficulties mentioned in accessing victim services are even greater for families who have missing or murdered relatives. Family members mentioned that their assistance needs were not met, particularly because they did not receive sufficient information about their rights, the process and their role in it and have difficulty in accessing information about the range of available services. Some family members further indicated that the police did not communicate with them during the investigation, which was confirmed by civil society organizations. The Committee is also concerned about the disparity of victim services available in provinces and territories and the lack of nationwide consistent standards, including with regard to legal aid, which further compound discrimination against Aboriginal women.

179. In 2008, the Committee expressed concern at reports that public funding for legal aid had diminished and that access to legal aid had become increasingly restricted for women belonging to disadvantaged groups, including Aboriginal women, in particular in British Columbia. The issue of vanishing legal aid due to deep budget cuts in recent years was regularly highlighted during the inquiry. At the same time, Aboriginal women's demand for legal services is overwhelming in the areas notably of family and property law to enable them to escape violent relationships.

8. Efforts at compensation and reparation

180. Families of victims have the possibility to claim restitution from the offender when bringing their case to court. However, the Ombudsman reported that restitution is both under-utilized and poorly enforced in Canada and the costs for victims constitute a barrier to its accessibility.

181. The designated experts heard testimonies of family members who had received compensation, including the child of a murdered woman, who indicated that she was not satisfied with the monetary compensation received from the State. She further indicated that she would have preferred that the State party provide her with reparation in the form of recognition of its failure to properly address the case of her missing and murdered mother, whose remains had still not been located, as well as a personal apology. The absence of this type of reparation in the State party was raised by many family members with whom the designated experts met.

D. Call for a national inquiry and a national action plan

1. Addressing discrimination - call for a national inquiry

182. The designated experts interviewed a number of Aboriginal community organizations and representatives who indicated that, given the limitations of the British Colombia Missing Women Commission of Inquiry, there has been a strong call for the Federal Government to convene a National Public Inquiry into Missing and Murdered Aboriginal Women and Girls, and to consult with the provinces, territories and National Aboriginal Organizations on its terms of reference for such an inquiry. During their visit, the designated experts were informed that Premiers (Prime Ministers) of all provinces/territories, the Ombudsman, the Canadian Human Rights Commission, and national and international NGOs also supported the call for a national inquiry.

183. Civil society organizations stressed the existence of a tradition in the State party of appointing public commissions of inquiry whenever there is an issue of governmental or

public institutional failure in order to ensure a transparent and independent taking of evidence and assessment of the causes of the failure; to openly and publicly determine the best ways to prevent recurrence; and to strengthen public confidence and that of affected parties. Civil society organizations added that, in light of the long-standing distrust between the Aboriginal community and the governments and public institutions, a national public inquiry was the best mechanism for addressing and resolving the tragedy of murders and disappearances of Aboriginal women and girls. Civil society representatives informed the designated experts that they would expect a national inquiry to guide and inform the development of a National Action Plan on violence against Aboriginal women, as a significant step forward in the reconciliation between the Aboriginal community and the authorities.

184. In 2013, a Special Parliamentary Committee on Violence Against Indigenous Women was established by the Parliament to conduct a study on the high rates of missing and murdered Aboriginal women in the State party based on a motion moved by the Honourable Carolyn Bennett, The Liberal Party Aboriginal Affairs critic. She contended that the government has a responsibility to provide justice for the victims, healing for the families, and to work with partners to put an end to the violence; and that a special committee be appointed, with the mandate to conduct hearings on the critical matter of missing and murdered Indigenous women and girls in Canada, and to propose solutions to address the root causes of violence against Indigenous women across the country. The motion was supported by the New Democratic Party and the governing Conservative Party and passed unanimously on 27 February 2013. It conducted meetings and interviews between March and June 2013. In March 2014, it released its report called "Invisible women: a call to action – a report on missing and murdered Indigenous women in Canada".

185. Stakeholders interviewed by the designated experts were concerned about the independence of this Special Parliamentary Committee, its lack of transparency and its lack of consultation with Aboriginal representatives was seriously questioned by civil society organisations and members of Parliament, both emphatically stating that it cannot be considered a substitute for a national public inquiry.

186. The Committee considers that the meetings and interviews undertaken by the Special Parliamentary Committee on Violence against Indigenous Women cannot be considered as a substitute for a national public inquiry. It also considers that the continued reluctance of the Federal Government to establish a national public inquiry on the issue of missing and murdered Aboriginal women, despite the repeated calls to do so by Premiers of provinces/territories, independent bodies, representatives of the Aboriginal community, and national and international NGOs, creates a major obstacle to resolving the issue of missing and murdered Aboriginal women and ensuring reconciliation with the Aboriginal community.

2. National Plan of Action

187. The Committee is of the opinion that the restrictive focus of measures taken to address violence against Aboriginal women, the limited outreach of programmes to communities, the lack of disaggregated data, the limited co-ownership by Aboriginal communities of the programmes developed by the State party, and the lack of a coordinated large-scale approach to address the issue of violence against Aboriginal women, attest to the inadequacy of existing programmes in terms of content and scope.

188. Despite numerous calls from civil society organizations, representatives of the Aboriginal community and the Ombudsman for the development of a National Action Plan to combat violence against Aboriginal women, the State party is strongly opposed to the development of such a plan, indicating that government and police officials had addressed this matter in a strategic, coordinated and collaborative manner. Senior officials, however, informed the designated experts during an interview that there was no specific coordination

mechanism or agency and that devising measures to address violence against Aboriginal women was the responsibility of the Department of Justice.

189. In response to follow-up questions subsequent to the country visit, the Committee has been informed that in January 2012, Federal, Provincial, and Territorial (FPT) Ministers Responsible for Justice and Public Safety agreed to take a common approach to address violence against Aboriginal women and girls. Ministers directed senior justice officials (led by the province of British Columbia) to develop a justice framework to help guide individual and collective action on the issue. The framework will encourage jurisdictions to harmonize and coordinate their activities, where appropriate. It will also be flexible enough for each jurisdiction to work with their Aboriginal groups and other partners to develop responses that meet local needs. In November 2013, Ministers approved the draft justice framework for public release and directed officials to engage Aboriginal groups and other partners in dialogue over the next year. Officials will revise the draft framework, based on feedback from the dialogues, and report back to Ministers in one year on the development and implementation of the FPT Justice Framework to Address Violence against Aboriginal Women and Girls.

190. The Committee is concerned that, while the focus of the State party is on improving the response of the justice system and therefore on improving investigations, prosecution and punishment of perpetrators, the State party fails to specifically address the issue of missing and murdered Aboriginal women, by properly taking into account its socio-economic root-causes and its link with the wider issue of violence against Aboriginal women. Throughout the inquiry there was always a clear acknowledgement of the several cultural, socio-economic and political factors framing and fuelling the problem and a recognition that until an integrated, inter-sectoral approach is designed to address the problem, little will change.

191. The Committee also considers that the State party has failed to deal with violence against Aboriginal women as a serious large-scale problem requiring a comprehensive coordinated response. The State party has also failed to address the issue as a problem of socio-economic discrimination against Aboriginal women and of intergenerational trauma resulting from collective emotional and psychological wounding of the colonization, issues discussed in earlier sections of this report.

192. During interviews with the designated experts, senior officials in relevant Ministries, however, indicated that the development of a National Action Plan to improve the socio-economic conditions of the Aboriginal community was not needed, as the Government was taking sufficient measures in this regard and the AANDC had taken the lead of implementing such measures. However, representatives of an independent advisory body and of civil society consistently informed the designated experts that, in their view, there was no strategic view on the part of the federal Government on the objectives to be reached and on the use of available funds.

193. The State party however holds fast to its opinion and in its 14 January 2014 response to follow-up questions from the Committee after the country visit, reiterated that while a national level action plan may appear desirable to some and while there are clear benefits to coordination among services, it is also evident that community-based, locally driven responses which reflect the circumstances, needs and priorities of those most affected by violence against Aboriginal women are key instruments in resolving this issue. The Committee, however, is not convinced by the arguments put forward by the State party and is of the opinion that it cannot be a case of one or the other but that both approaches to the problem are absolutely necessary. Action on the ground must be informed by a coordinated master plan based on a consultative process involving those at all levels including the rights holders and must take into account all dimensions of the problem and the cultural, ideological, socio-economic, judicial and political structural barriers that undergird and are at the root of the problem.

IX. Legal findings of the Committee

A. Human Rights obligations of decentralized systems

194. In the context of the inquiry the State party representatives repeatedly raised that the federal structure of the State party, which entails clear jurisdictional responsibilities of the different levels of government, prevented it from decision-making and subsequent action in certain areas which remain under sole provincial authority. The Committee recalls that under international law of State responsibility, all acts of state organs are attributable to the State. Article 27 of the Vienna Convention on the Law on Treaties, to which Canada is a party, provides that a State may not invoke the provisions of its internal law as a justification for its failure to comply with a treaty.

195. The Committee stresses that, in the context of a decentralized system, the responsibility for the implementation of the Convention lies with the State party as a whole. The State party is therefore responsible for ensuring compliance with the standards of the Convention by all of its organs, including provinces and territories, to which powers have been delegated. In this respect, the Committee recalls its General Recommendation No. 28 (2010), in which it clearly sets out States parties' obligations in the context of decentralisation and devolution of powers. General Recommendations 28 establishes that such "delegation of Government powers does not in any way negate or reduce the direct responsibility of the State party's national or federal Government to fulfil its obligations to all women within its jurisdiction. [11]

B. The State's obligation under CEDAW

196. The Committee recalls that, under article 2 (c) and (e), States parties are obliged to take appropriate and effective measures to overcome all forms of sex and gender-based discrimination which fosters violence against women, whether by public or private actors[12]. In this regard, the Committee notes that, in line with General Recommendations 19 and 28[13] and its consistent jurisprudence[14], States parties may be responsible for private acts if

[11] General Recommendation No. 28, paras 39-40: "The accountability of States parties to implement their obligations under the Convention is engaged through the acts or omissions of all branches of Government. The decentralization of power, through devolution and delegation of Government powers in both unitary and federal States, does not in any way negate or reduce the direct responsibility of the State party's national or federal Government to fulfil its obligations to all women within its jurisdiction. In all circumstances, the State party that ratified or acceded to the Convention remains responsible for ensuring full implementation throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities have the necessary financial, human and other resources to effectively and fully implement the obligations of the State party under the Convention. The Governments of States parties must retain powers to require such full compliance with the Convention and must establish permanent coordination and monitoring mechanisms to ensure that the Convention is respected and applied to all women within their jurisdiction without discrimination. Furthermore, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination with regard to the enjoyment of rights by women in different regions. Effective implementation of the Convention requires that a State party be accountable to its citizens and other members of its community at both the national and international levels. In order for this accountability function to work effectively, appropriate mechanisms and institutions must be put in place."

[12] General Recommendation No. 28, para. 36.

[13] General Recommendation No. 19, para. 9: "It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for

they fail to act with due diligence in combating gender-based violence, which entails a duty to prevent, investigate, prosecute and punish such acts of violence against women, and to provide for reparation. In Yildrim v. Austria and Goecke v. Austria, the Committee found that the duty of due diligence with respect to acts of private actors arose when there was a situation of violence of which the authorities knew or should have known. According to the Special rapporteur on violence against women, its causes and consequences, in situations where particular women and girls are at known risk the State party has "an obligation to set up effective mechanisms to prevent further harm from occurring." [15] She also considers that the due diligence requirement is not limited to the way in which an investigation is conducted, but also encompasses a right for victims to access information about the status of an investigation. [16] Furthermore, the State party also has an obligation to investigate systematic failures to prevent violence against women and to actively address structural and systemic gender inequality and discrimination.

197. The Committee recalls that, according to General Recommendation No. 28, State parties have an obligation "not to cause discrimination against women through acts or omissions"[17]. The Committee refers to General Recommendation 19 which underlines that "the definition of discrimination in article 1 of the Convention includes gender-based violence, that is, violence directed against a woman because she is a woman or that affects women disproportionately"[18]. General Recommendations 19 and 28 also both state that violence against women encompasses "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, the violence that occurs within the family or domestic unit or within any other interpersonal relationship, or violence perpetrated or condoned by the State or its agents regardless of where it occurs". [19] It follows that all women within the jurisdiction of the State party, including Aboriginal women, are entitled to be free from violence and from fear of violence.

198. Article 2 (d) of the Convention establishes an obligation for public authorities and institutions to abstain from engaging in any act or practice of discrimination against women. The State party's undertakings under article 2 (d) are obligations of result. Further, both articles 2 (c) and (e) entail obligations in relation to effective protection through remedies that are practically available and accessible for women who wish to assert their rights before the relevant courts or other institutions. State parties are therefore required to adopt measures to ensure the practical realization of the elimination of discrimination

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."; See also General Recommendation No. 28, paras 10, 13 and 19. Para. 13 states : "Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor's act or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention."

[14] Communication No. 31/2011, *S.V.P. v. Bulgaria*, 12 October 2012 at para. 9.3; Communication No. 32/2011, *Jallow v. Bulgaria*, 23 July 2012, para. 8.4 ; VK v Bulgaria, Communication No. 20/2008, September 2011, para. 9.3; Vertido v. Philippines, CEDAW/C/46/D/18/2008, September 2010, para. 8.4;

[15] *Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk E/CN.4/2006/61, 20 January 2006.

[16] Report of the Special Rapporteur on violence against women, "State responsibility for eliminating violence against women", A/HRC/23/49 May 2013, para. 73.

[17] General Recommendation No. 28, para. 10.

[18] General Recommendation No. 19, para. 1 and 6. See also General Recommendation No. 19, para. 6: "Gender-violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."

[19] General Recommendation No. 19, para. 6 and General Recommendation No. 28, para. 19.

against women, including measures that enable them to effectively complain about violations of their rights under the Convention and to obtain an effective remedy. [20] While the State party's undertakings under article 2 (c) are obligations of result, article 2 (e) involves an obligation of means by requiring that the State party take "reasonable measures that have a real prospect of altering the outcome or mitigating the harm". [21]

199. The Committee observes that article 15 embodies the principle of equality before the law, which seeks to protect women's status before the law, be it as a claimant, a witness or a victim, [22] and encompasses all decision-making bodies, executive or judicial including civil, criminal, and administrative courts and tribunals. The State party's duty to protect women from violations of their human rights by both State and non-State actors includes the violation of their right to equality before the law. According to the Committee's jurisprudence, article 15 includes the right to adequate compensation in cases of violence including sexual violence.[23] Further, the Committee considers that equality before the law is necessarily related to positive obligations of States parties to fulfil economic and social rights enshrined in the Convention, articles 10, 11 and 12, in order to create equal opportunities for women to exercise the rights in article 15. In this regard, the Committee observes that article 3 requires positive action by States parties in the social, economic, political and cultural fields in order to facilitate women's capacity to combat violence against them. Furthermore under article 14 (1) the State party shall take into account the particular problems faced by rural women and take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

200. The Committee recalls that the Convention recognises that particular groups of women may be subject to specific forms of discrimination based on sex and other prohibited grounds of discrimination, and that States parties must address intersecting forms of discrimination. [24] In Kell v. Canada, the Committee noted that "as the author is an Aboriginal woman who is in a vulnerable position, the State party is obliged to ensure the effective elimination of intersectional discrimination". [25] The Committee underlines that intersectional discrimination increases the risk of violence and heightens its adverse consequences when it occurs and that State parties have special obligations to ensure that indigenous individuals are entitled without discrimination to enjoy all human rights as also affirmed by the UN Declaration on the Rights of Indigenous Peoples (2006).

C. Legal assessment

201. The Committee notes that the extent and nature of violence against Aboriginal women in the State party which, in this case, has warranted the initiation of an inquiry procedure under article 8 of the Optional Protocol covers the extreme form of violence of cases of missing and murdered Aboriginal women. The Committee recalls its General

[20] Kell v. Canada, Communication No. 19/2008, April 2012, para. 10.3.
[21] Report of the Special Rapporteur on violence against women, "State responsibility for eliminating violence against women", A/HRC/23/49 May 2013, paras 16 and 72.
[22] Communication No. 31/2011, *S.V.P. v. Bulgaria*, 12 October 2012, para. 9.11.
[23] Communication No. 31/2011, *S.V.P. v. Bulgaria*, 12 October 2012, para. 9.11. See the Committee's General Recommendation No. 19, para. 24 (i).
[24] General Recommendation No. 28, para. 18: "In its general recommendation No.28, the Committee states that intersectionality is a basic concept for understanding the scope of the general obligation of States parties contained in article 2 of the Convention. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned." See also Kell v Canada, Communication No. 19/2008, April 2012, para. 10.2.
[25] Kell v. Canada, Communication No. 19/2008, April 2012, para. 10.3.

Recommendation 19 indicating that "Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include the right to life and the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment". The Committee also notes that the root causes for such violence may be traced back to colonial and post-colonial policies and practices and to the long-lasting social and economic marginalization of Aboriginal peoples, which has not been sufficiently addressed. [26]

202. The main issues on which the Committee has to decide upon in this case is whether the State party has fulfilled its direct obligations under the Convention in relation to victimization of Aboriginal women by different public actors, legislators, administrators, law enforcement officials or other public authorities. Furthermore, the Committee needs to establish whether the State party has fulfilled its due diligence obligation to prevent, protect, investigate, punish and provide reparations to victims of gender-based violence, victims that have gone missing or have been murdered by private non-State actors. The basic yardstick here is not only if the same standards and procedures have been applied to crimes of violence against Aboriginal women as have been applied to crimes against other groups of the Canadian population, but in light of the factual findings above whether the State party systematically has strengthened its institutional response commensurate with the vulnerabilities identified and the seriousness of the situation. Only then, can Aboriginal women be provided with effective protection and remedies, taking into account their disadvantaged position. Before addressing the issue of the fulfilment of the State party's due diligence obligation, the Committee will assess the State party's fulfilment of its obligation under articles 3, 5 (a) and 14 (1) under the Convention.

203. The Committee considers that the realization of economic, social, political and cultural rights of Aboriginal women is necessary to enable them to escape violence[27]. The Committee finds that the State party's failure to provide such conditions, including education, housing and transportation options and support to families and children, as described in the factual findings, places Aboriginal women at an increased vulnerability, making it more difficult for them to achieve protection against and redress for different forms of violence. In this regard, the Committee recalls that Aboriginal women's overrepresentation in trafficking, sexual exploitation and prostitution ensuing from their economic and social marginalization puts them at a disproportionately high risk for disappearance and murder. The Committee observes that the marginalized status of Aboriginal women and girls, which is set out in the factual findings and acknowledged by the State party, has a direct impact on their vulnerability to violence in the home and on the streets, whether on- or off-reserve. The Committee also considers that the insufficient coordination between the different jurisdictional powers of the State party, as indicated in the 2010 report of the Coordinating Committee of Senior Officials, Missing Women Working Group established by the Ministry of Justice which included members from the Justice and Public Safety Departments of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Canada, exposes Aboriginal women to gaps with regard to both social and judicial protection. The Committee considers that this is in violation of article 3 which provides for an obligation for State parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures

[26] See for example Concluding Observations on Australia, 2010, para. 41.

[27] In *A.T. v. Hungary*, the CEDAW Committee found that the State had an obligation to ensure that adequate housing was available to permit women to escape violence. In the *Kell v. Canada* decision, the Committee found that there was a tight connection between being able to escape violence and having adequate legal aid to assist with property and housing issues.

to "ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

204. The Committee notes that the different forms of violence experienced by Aboriginal women and girls constitute multiple forms of discrimination against them, based on their sex and gender, as well as their race based Aboriginal identity. The Committee considers that the information before it shows that Aboriginal women face intersectional discrimination stemming from these factors which are inextricably intertwined. In addition, the intersectional discrimination suffered by Aboriginal women living on-reserve is exacerbated by their living in a rural environment, due to their geographic isolation, limited mobility and lack of safe transportation, as well as their limited access to law enforcement, protection and counselling services. The Committee considers that intersecting forms of discrimination and their compounded negative impact on Aboriginal women further aggravate violence against Aboriginal women. This view is corroborated by findings of the Special Rapporteur on violence against women, who has taken note of the high rate of violence against Aboriginal women in the State party, observed that "the intersection of different layers of discrimination based on race, ethnic identity, sex, class, education and political views [that] further disenfranchises indigenous and aboriginal women, reproduc[e] a multi-level oppression that culminates in violence."[28] The Committee considers that, while the State party generally recognizes the consequences of intersecting forms of discrimination based on sex, gender and race, which lead to increased vulnerability of Aboriginal women, it has failed to sufficiently take into account the particular problems of Aboriginal women living on reserves due to their rural environment, in breach of article 14 (1).

205. The Committee recalls that under article 2 (f) and 5 (a) of the Convention, States parties have an obligation to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices and damaging stereotypes that constitute discrimination against women. The Committee also notes that the intersectional discrimination suffered by Aboriginal women in the State party results in the gender-stereotyping they are facing. It considers that, in the State party, gender-stereotyping is persistent in the society and institutionalized within the administration, including within law enforcement agents. This includes stereotypical portrayals of Aboriginal women as prostitutes, transient or runaways and having high-risk life styles, and an indifferent attitude towards reports of missing Aboriginal women. The Committee considers that, in spite of the fact that the State party has made an effort to provide gender-sensitive training for the police, it has failed to take sufficient and appropriate measures to address gender-stereotyping, including institutionalized stereotyping, in breach of its obligations under articles 2 (f) and 5 (a) of the Convention.

206. The Committee acknowledges that since 2010 the State party has taken significant steps to address the situation of violence faced by Aboriginal women through a number of measures and initiatives, in particular to investigate disappearances and murders of Aboriginal women in order to bring perpetrators to justice. While noting the progress achieved regarding the managing of police operations and adoption of policies and best practice-documents, the Committee is concerned that many shortcomings remain regarding reporting and investigation of crimes, provision of shelters and transportation facilities and the lack of trust in relations between police and Aboriginal women based on sexism and racism, resulting in impunity, as elaborated in the factual findings.

207. The Committee recalls the importance for victims of violence or their relatives to receive information about their rights and about programmes and services available to them

[28] Report of the Special Rapporteur on Violence against women on gender-based killings, 2012, para. 62.

in order to enable them to effectively exercise these rights. The Committee also recalls that the manner in which police officers respond, their attitude toward victims, the protection they provide and the way they conduct the investigations are a vital first step in ensuring victim safety and offender accountability[29]. However, as explained in the factual findings, the Committee notes the limited effectiveness and accessibility of complaints procedures and remedies, including for relatives of missing or murdered women. The Committee further notes that the prevailing distrust of Aboriginal women, in particular towards law enforcement agents, combined with biased attitudes and stereotypes on the part of officials of the State party, have hampered Aboriginal women's awareness that they are right-holders, have discouraged them to report violence and caused them to stay away from the legal process. The Committee recalls that the State party has an established legislative and institutional framework, as well as a functioning judiciary, including preventive and protective measures as well as remedies for women victims of violence. However, to meet the due diligence standard, the formal framework established by the State must also be effective in practice, as it is not the formal existence of judicial remedies that demonstrates due diligence, but rather their actual availability and effectiveness[30].

208. The Committee observes that, in order for Aboriginal women victims of violence to enjoy their human rights and fundamental freedoms, State actors at all levels, including the police and the judicial system, must fully adhere to the State party's due diligence obligations in order to put them into effect[31]. In the present case, the State party's compliance with its due diligence obligation to take appropriate and effective measures to overcome all forms of gender-based violence needs to be assessed in the light of its extensive and long-standing knowledge of patterns of vulnerability and risk for Aboriginal women on its territory. Based on its own governmental reports and the Committee´s concluding observations of 2008, the State party had knowledge of the high levels of violence against Aboriginal women and girls, the existence of structural patterns of inequality faced by Aboriginal women, notably in education, housing, health and employment, challenges in accessing justice, and shortcomings of the justice system. Moreover, the Committee notes that the State party during a long period prejudiced the rights of families of missing and murdered Aboriginal women by failing to conduct effective investigations in cases of missing and murdered Aboriginal women, with a number of cases remaining unresolved.

209. General Recommendation 19 indicates that States parties can be held accountable for the conduct of non-State actors in stating that "[…] discrimination under the Convention is not restricted to action by or on behalf of Governments […]" and that "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 Committee recalls that the factual findings show that there are shortcomings in the State party's system to eliminate violence against women preventing it from effectively protecting Aboriginal women, ensuring that offenders are held accountable, and providing redress for Aboriginal victims. The Committee notes with serious concern that perpetrators may count on the

[29] Report of the Special Rapporteur on violence against women, "State responsibility for eliminating violence against women", A/HRC/23/49 May 2013, para. 50.

[30] Report of the Special Rapporteur on violence against women, "State responsibility for eliminating violence against women", A/HRC/23/49 May 2013, para. 72 (referring to European Court of Human Rights, applications No. 33401/02, Opuz v. Turkey, judgement of 9 June 2009, para. 148 and Inter-American Commission on Human Rights, case No. 12.626, Lenahan (Gonzales) v. United States of America, 21 July 2011, para. 212. While due diligence does not require perfect deterrence in fact in each case, it requires the State to act in a way to reasonably deter violence. Due diligence will look to whether protective measures available in domestic law are appropriate to respond to the situation, and whether they were employed.

[31] See Yildrim v. Austria, para. 12.1.2.

insufficient response of the police and the justice system and continue to operate in an environment conducive to impunity, where Aboriginal women continue to suffer high levels of violence with insufficient criminal liability and without having adequate access to justice.

210. In light of the above, the Committee finds that the State party has failed to strengthen its institutional response commensurate with the vulnerabilities identified and the seriousness of the situation in order to provide Aboriginal women with effective protection and remedies, taking into account their disadvantaged position. The Committee considers that the State party failed to take effective measures to apply its legislative framework in practice, give effect and implement the many recommendations that were tabled in plans and programs, and ensure that its agents provide effective protection and conduct effective investigations and prosecutions particularly in relation to missing and murdered Aboriginal women. The Committee finds that the failure of the State party to address and remedy the disadvantaged social and economic conditions in which Aboriginal women and girls live, compounded by the insufficient measures taken to address the prevalence of all forms of violence against Aboriginal women and their difficulties in accessing justice, has allowed such violence to persist in the State party. The Committee observes that although the rate of resolved cases has increased, the high number of remaining unresolved cases of missing and murdered Aboriginal women is a result of such failure. Accordingly, the Committee concludes that the State party has violated its obligations under article 2 (c) and under article 2 (e) by failing to act with due diligence. It also considers that the State party has failed to ensure that Aboriginal women are protected against discrimination committed by public institutions, as required by article 2 (d). Accordingly, the Committee finds that the State party has violated article 2 (c), (d) and (e), in conjunction with article 15 of the Convention.

211. Recalling that the provisions mentioned below should be read together with General Recommendations 19 and 28, the Committee is of the view that the State party has failed to comply with its obligations under the Convention and has therefore violated the rights of Aboriginal women victims of violence, in particular those victims of murder and disappearance and their family members, under articles 1, 2, paragraphs (c) (d) (e) and (f), 3, and 5 (a), read in conjunction with articles 14 (1) and 15 paragraph (1), of the Convention.

212. The Committee further stresses that the federal structure of the State party does not relieve it of its international obligations. On the contrary, in the context of increased decentralization, the necessity for strict minimum standards and safeguards to uphold the State party's obligations under the Convention and to ensure the practical realization of human rights for all women, including disadvantaged groups such as Aboriginal women, is even more significant.

D. Nature of the violations - Grave or systematic

213. In accordance with article 8 of the Optional Protocol to the Convention and Rule 83 of the Committee's Rules of Procedure, it is for the Committee to examine whether the "violations by a State party of the rights set forth under the Convention" are "grave or systematic". The Committee's findings regarding the gravity of the violations must take into account, notably, the scale, prevalence, nature and impact of the violations found.

214. The Committee takes note of the magnitude and the severity of the issues of murdered and missing Aboriginal women as well as the gender-based violence against Aboriginal women and recalls that the State party has acknowledged the disproportionate levels of violence faced by Aboriginal women and girls, and in particular levels of violent victimization. The Committee emphasizes that cases of missing and murdered Aboriginal women continue to cause severe pain and suffering to their relatives and communities. The

Committee notes that its factual findings have highlighted that the measures taken to prevent and protect Aboriginal women from disappearances and murders have been insufficient and inadequate, that the weaknesses in the justice and enforcement system have resulted in impunity and that there has been a lack of any efforts to bring about any significant compensation and reparation. The Committee observes that the protracted failure of the State party to take effective measures to protect Aboriginal women, although a coordinated response was clearly required, still have current repercussions and serious consequences, despite the measures taken recently. The Committee recalls that gender-based violence seriously inhibits Aboriginal women's capacity and that of their children to enjoy their rights and freedoms.[32] The Committee agrees with the State party that the refusal to adopt a National Action Plan, as such, is not a grave or systematic violation of the Convention but maintains that a National Public Inquiry out of which would emanate a National Action Plan elaborated in collaboration with relevant stakeholders would enable the State party to address many of the violations highlighted in this report. The Committee therefore concludes that the violations indicated in the findings above reach the required threshold of gravity given the significant negative consequences of acts of violence on Aboriginal women's right to life and personal security, as well as on their physical and mental integrity and health. The violations outlined above taken together therefore constitute grave violations under Article 8 of the Optional Protocol. In light of this finding there is no need to further consider whether the violation has been systematic.

215. The Committee is of the view that the State party has violated the rights of Aboriginal women victims of violence, in particular those victims of murder and disappearance and their family members, under articles 1, 2, paragraphs (c) (d) and (e), 3, and 5 (a), read in conjunction with articles 14 (1) and 15 paragraph (1), of the Convention and has failed to fulfil recommendations in the Committee's previous concluding observations and its General Recommendations Nos. 19 and 28. The Committee makes the following recommendations to the State party, which should be considered and implemented as a whole, namely including the recommendations to improve the socio-economic situation of Aboriginal women, in order to fully address the issue of missing and murdered Aboriginal women as well as all other forms of violence that they experience.

X. Recommendations

A. Combating violence against Aboriginal women

216. The Committee calls on the State party to take the following measures to address cases of missing and murdered Aboriginal women:

i. Ensure that all cases of missing and murdered women are duly investigated and prosecuted;

ii. Significantly increase awareness-raising campaigns to ensure that members of the Aboriginal community are aware of relevant procedures for reporting missing persons, including the absence of a waiting period before a person can be reported missing;

iii. Ensure that all police agencies follow standardised, mandatory protocols on how to respond to cases of missing and murdered Aboriginal women including that:

(a) Any person can report a missing person in any jurisdiction, including outside his/her community of residence or outside the jurisdiction where the victim went missing;

[32] General Recommendation No. 19, para. 1.

(b) Police officers take seriously all reports of missing Aboriginal women and treat persons that make the report with respect and dignity;

(c) The police regularly communicate with the families of missing persons and provide regular updates on the status of the case, in an appropriate manner.

iv. Establish a monitoring mechanism for the implementation of these protocols, and provide for sanctions in instances where they are not being applied;

v. Consider establishing a National Missing Persons Office to coordinate all activities related to missing persons and disseminate information to families; and, consider involving Aboriginal liaison officers, who work with affected families and the police in cases of missing and murdered Aboriginal women;

vi. Provide adequate culturally-sensitive services to support families of missing and murdered women, including legal and psycho-social counselling, as well as compensation and other appropriate reparation; consider taking measures to support families of victims, including, for example, disclosure of truth, public apologies and commemoration of victims.

Data Collection

i. Systematically collect data, disaggregated by ethnicity of victims and offenders, on all forms of violence against women, including on the number of Aboriginal women engaged in prostitution and trafficked women, as well as on cases of missing and murdered women, make such data collection mandatory for all police detachments;

Police investigations and law enforcement

i. Develop and implement appropriate policies or establish mechanisms to ensure inter-jurisdictional and inter-agency coordination of law enforcement agencies, information-sharing and cooperation within RCMP jurisdictions as well as with other police agencies;

ii. Increase the number of female police officers and Aboriginal police officers within all police forces;

iii. Increase efforts to build trustful relationships between the police and Aboriginal communities, including by deploying properly trained police officers to reserves for sufficient periods of time;

Police complaint mechanisms

i. Ensure the independence of oversight bodies to investigate cases of abuse and misconduct of police officers, and in particular:

(a) Consider establishing independent civilian oversight bodies to conduct investigations of reported incidents of police misconduct, including sexual offenses by the police, and in particular, enhance the independence of the RCMP oversight body (CRCC) by ensuring that investigations of misconduct by RCMP officers are not investigated by members of its own body;

(b) Expand the mandate of the British Columbia Independent Investigations Office to include jurisdiction over cases of sexual offences by police officers;

ii. Ensure that Aboriginal women have effective access to existing complaint procedures to challenge police conduct, including by raising awareness among the Aboriginal community on the procedure and facilitating the process of lodging a complaint for victims, particularly those living in remote areas;

Access to justice

i. Work in partnership with Aboriginal women's representatives to determine the most effective strategies for overcoming barriers to accessing justice and reducing the over-representation of Aboriginal women in contact with the justice system, whether as victims or as offenders;

ii. Provide sufficient funding for legal aid and make legal aid available to Aboriginal women, if necessary free of charge, in particular for issues related to violence, protection orders, division of matrimonial property on- and off-reserve and child custody;

iii. Address all forms of violence against Aboriginal women, both in rural and urban areas, perpetrated by Aboriginal as well as non-Aboriginal offenders, by ensuring effective access to remedies for all acts of violence;

Victim services

i. Develop nationwide consistent standards to harmonize the provision of victim services among provinces/territories; ensure proper coordination among the various agencies from which women may seek help; ensure that police systematically refer victims to victim or community services; provide services to support Aboriginal women's specific needs including trauma support; and increase awareness-raising among Aboriginal women about the range of services available to them;

ii. Significantly enhance the provision of culturally-appropriate violence prevention services, as well as shelters, counselling and rehabilitation programmes for Aboriginal women victims of violence in all provinces/territories;

iii. Consider adopting a Victims Rights Bill aimed at increasing access to victim services, and consider including culturally appropriate services for Aboriginal women;

Stereotyping

i. Address conditions and practices that result in over-criminalization and over-incarceration of Aboriginal women and girls especially those based on institutionalised stereotyping;

ii. Significantly strengthen awareness-raising on Aboriginal culture for judges, lawyers, prosecutors, police, other law enforcement officers, and service providers; develop such training in collaboration with Aboriginal organizations, including training aimed at eliminating acts of racism and sexism; ensure that such training is provided continuously during the career of law enforcement officers and give preference to in-class rather than online training;

Aboriginal Women in Prostitution and Trafficking

i. Pay special attention to the needs and situation of Aboriginal women in prostitution when reviewing the Supreme Court's decision concerning invalidation of Section 213 of the Criminal Code and ensure that women engaged in prostitution are not criminalized.

ii. Develop rehabilitation, social reintegration and exit programmes specifically targeted at Aboriginal women engaged in prostitution;

iii. Conduct studies and surveys on the prevalence and forms of trafficking in Aboriginal women and girls within and outside the community and on the possible links with cases of missing and murdered women;

iv. Review the National Strategy to combat Human Trafficking in order to ensure that it provides for specific measures for protection and assistance to Aboriginal victims, for the detection, investigation and prosecution of offenders, as well as for the identification of victims of human trafficking among Aboriginal women and girls;

v. Increase its efforts, through international, regional and bilateral cooperation with countries of origin, transit and destination of trafficking, to prevent trafficking through information exchange;

B. Improving socio-economic conditions of Aboriginal women

i. Take comprehensive measures to significantly improve the socio-economic condition of the Aboriginal community, including the particular conditions affecting Aboriginal women, both on- and off-reserve.

ii. Collect data, disaggregated by sex and Aboriginal/non-Aboriginal status on social and economic conditions of members of the Aboriginal community, both on- and off-reserve;

iii. Develop national anti-poverty, food security, housing, education and employment strategies focusing on women in the Aboriginal community; take measures to increase access to health services, including mental health services and drug dependency treatment; ensure access to sanitation and safe drinking water; and develop adequate public transport in areas and along highways where Aboriginal women are in danger when moving between communities and travelling to work or school;

iv. Address the issue of the disproportionately high number of Aboriginal children institutionalized by child welfare authorities which impacts on Aboriginal women's vulnerability to violence as they are reluctant to seek help from authorities for fear that their children be taken away.

C. Overcoming the legacy of the colonial period and eliminating discrimination against Aboriginal women

Take measures to overcome the legacy of the colonial period and to eliminate discrimination against Aboriginal women, and in particular:

i. Take concrete measures to break the circle of distrust between the authorities and the Aboriginal community, improve avenues of communication and engage in a meaningful dialogue with representatives of the Aboriginal community;

ii. Conduct education and public information campaigns, including within the school system, and training for civil servants, that acknowledge and address the history of dispossession and marginalization of the Aboriginal community, improve understanding of the impact of colonialism on the Aboriginal community and address racism and sexism, with a view to eliminating negative stereotypes against Aboriginal women;

iii. Support initiatives of the Aboriginal community to foster pride and self-esteem of its members, including Aboriginal women, by providing a strong grounding in Aboriginal identity, culture, language, and relationship and responsibility to land;

iv. Take effective measures to ensure that the media promote respect for Aboriginal women, including through the development of best practices to improve the portrayal of Aboriginal women in the media;

v. Amend the Indian Act to eliminate discrimination against women with respect to the transmission of Indian status and in particular to ensure that Aboriginal women enjoy the same rights as men to transmit status to children and grandchildren, regardless of whether their Aboriginal ancestor is a woman, and remove administrative impediments to ensure effective registration as a Status Indian for Aboriginal women and their children, regardless whether or not the father has recognized the child;

vi. Promote the use of the Canadian Human Rights Act by Aboriginal women as a tool to combat discrimination and acts of violence.

D. National public inquiry and plan of action

i. Take measures to establish a National Public Inquiry into cases of missing and murdered Aboriginal women and girls which must be fully independent from the political process and transparent with the development of the Terms of Reference and the selection of a Commissioner carried out based on the views of representatives of Aboriginal communities in the provinces, territories and National Aboriginal organisations.

ii. Based on the findings of the National Public Inquiry, develop an integrated National Plan of Action and a coordinated mechanism, in consultation with representatives of the Aboriginal community to address all forms of violence against Aboriginal women and ensure the allocation of sufficient human and financial resources for the effective implementation of the Plan; ensure that all measures identified in the recommendations made by the Committee in this report are reflected in the National Plan of Action;

iii. Establish a mechanism for monitoring and evaluating implementation of the Plan, in coordination with the Aboriginal community, so that corrective measures can be taken if deemed necessary.

Annex

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