

Thursday, November 01, 2012

Attention: Martha Labarge
Director General, Strategic Management and Human Rights,
Chair of the Continuing Committee of Officials on Human Rights
Human Rights Program
Department of Canadian Heritage
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Dear Madam Labarge and Committee Members,

Implementation of CERD and CAT recommendations regarding murders and disappearances of Aboriginal women and girls

Lawyers' Rights Watch Canada and the B.C. CEDAW Group¹ wish to make the following observations and recommendations for substantive implementation of recommendations by the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD) and the UN Committee Against Torture (CAT) regarding the murders and disappearances of Aboriginal women and girls. This submission also addresses the need for mechanisms to ensure effective implementation of international human rights treaties throughout Canada.

Implementation of International Human Rights Obligations in Canada

Canada has no effective federal-provincial-territorial mechanism for implementation of obligations under international human rights treaties and of recommendations from international treaty bodies and the Human Rights Council which emerge from reviews of Canada's human rights performance. Human rights treaty bodies have criticized Canada sharply for its failure to have such a mechanism and for ignoring key recommendations that have been made repeatedly to Canada.²

A joint submission to the UN Human Rights Council for the 2013 Universal Periodic Review (UPR) of Canada endorsed by more than fifty non-governmental organizations (NGOs) recommends that the Government of Canada "launch a process of law reform to establish a formal mechanism for transparent, effective and accountable implementation

¹ The B.C. CEDAW Group is a coalition of: The Poverty and Human Rights Centre, Coalition of Child Care Advocates of B.C., Hospital Employees' Union, Justice for Girls, Vancouver Committee for Domestic Workers and Caregivers Rights, Vancouver Rape Relief and Women's Shelter, Canadian Association of Sexual Assault Centres, B.C. and Yukon Region, West Coast Women's Legal Education and Action Fund

² See Human Rights Committee, 85th Session, *Concluding Observations of the Committee: Canada*, CCPR/C/CO/CAN/5, 20 April 2006, at para. 6; Committee on Economic, Social and Cultural Rights, 36th Session, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, 22 May 2006, at paras.11 and 12.

of Canada's international human rights obligations. An *International Human Rights Implementation Act* should be developed through a process of extensive consultation with provincial and territorial governments, Indigenous peoples and organizations and civil society groups.”

Canadian NGOs also recommend in this submission that Canada “provide to the Human Rights Council within one year of its 2013 UPR a report on the precise plans for implementation of UPR recommendations, including procedures and resources to be made available to ensure meaningful participation of civil society and Indigenous peoples and organizations.”³

LRWC and the B.C. CEDAW Group endorse these two recommendations.

Role of CCOHR

The Continuing Committee of Officials on Human Rights (CCOHR) is not the mechanism that is recommended by UN treaty bodies or sought by Canadian civil society. It does not have the authority or mandate to monitor and implement international human rights obligations as required.

We understand that the CCOHR meets twice a year to consult and share information on international human rights instruments, and that it facilitates coordination of Canada's reports to UN human rights bodies, and ratification of new human rights treaties. The officials designated to participate in the body are not persons with decision-making authority. The CCOHR is “virtually unknown by most Canadians, conducts all of its work *in camera* and never reports publicly.”⁴

As far back as 2001, the Senate Committee on Human Rights was pointedly critical of the lack of any public body at the federal and provincial/territorial levels to ensure government compliance with Canada's international human rights obligations, and was clear that this role was not being fulfilled by the CCOHR. The Senate Committee said:

The real issue and problem is not, however, that the Continuing Committee of Officials on Human Rights is not providing a public forum for domestic accountability and scrutiny of Canada's implementation of its international human rights commitments... The real problem for Canada is that no other official body or institution of government is performing this function either.⁵

³ For more detail see *Empty Words And Double Standards: Canada's Failure To Respect And Uphold International Human Rights: Joint Submission to the United Nations Human Rights Council in relation to the May 2013 Universal Periodic Review of Canada*, October 9, 2012, online at:

<http://nwac.ca/sites/default/files/imce/NGO%20Coalition%20Statement%20-%20Canada%20UPR%202013%20Sept%2026%20FINAL%20ENG.pdf>

⁴ Amnesty International et al., *Promise and Reality: Canada's International Human Rights Implementation Gap. Joint NGO Submission to the United Nations Human Rights Council in relation to the February 2009 Universal Periodic Review of Canada*, at 2-3, online at:

http://www.amnesty.ca/themes/resources/canada/Canada_un_upr_joint_ngo_submission.pdf

⁵ Raynell Andreychuk & Sheila Finestone, *Promises to Keep: Implementing Canada's Human Rights Obligations: Report of the Standing Senate Committee on Human Rights* (Ottawa: Government of Canada, 2001), online at: <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02dec01-e.htm>

Unfortunately, despite the urging of UN treaty bodies, the Senate Committee and many civil society organizations, there has been no change. No political level meeting of federal, provincial and territorial ministers responsible for human rights has occurred since 1988. There is still no credible public process for discussion of coordinated, national action plans to respond to and implement recommendations from international human rights bodies.

LRWC and the B.C. CEDAW Group are concerned about the utility of providing comments to the CCOHR regarding implementation of recommendations from the CERD and CAT, when the CCOHR is not a body which has capacity or authority to implement the recommendations of CERD and CAT or other treaty monitoring bodies.

Implementing Recommendations of CERD and CAT

Nonetheless, because there is no appropriate mechanism in place, we transmit to the CCOHR our advice regarding the implementation of recommendations set out in paragraph 17 of the 2012 CERD Concluding Observations on Canada and paragraph 20 of the 2012 CAT Concluding Observations on Canada. Paragraph 17 of the CERD Concluding Observations states:

17. The Committee takes note of various measures taken by the State party to combat violence against Aboriginal women and girls, such as the Family Violence Initiative, the Urban Aboriginal Strategy, and various initiatives taken at the provincial or territorial level to address murders and disappearances of Aboriginal women. However, the Committee remains concerned that Aboriginal women and girls are disproportionately victims of life-threatening forms of violence, spousal homicides and disappearances (art. 5).

The Committee recommends that the State party:

- (a) Strengthen its efforts to eliminate violence against Aboriginal women in all its forms by implementing its legislation and reinforcing its preventive programmes and strategies of protection, including the Shelter Enhancement Program, the Family Violence Prevention Program, the Policy Centre for Victim Issues and the Aboriginal Justice Strategy and the new National Police Support Centre for missing persons;**
- (b) Facilitate access to justice for Aboriginal women victims of gender-based violence, and investigate, prosecute and punish those responsible;**
- (c) Conduct culturally-sensitive awareness-raising campaigns on this issue, including in affected communities and in consultation with them;**
- (d) Consider adopting a national plan of action on Aboriginal gender-based violence;**
- (e) Consult Aboriginal women and their organisations and support their participation in development, implementation and evaluation of measures taken to combat violence against them.**

The Committee further recommends that the State party support existing databases and establish a national database on murdered and missing Aboriginal women and provide the Committee with statistical data and information on concrete results of its programmes and strategies.

Paragraph 20 of the 2012 CAT Concluding Observations states:

20. While noting several measures taken by the federal and provincial governments to combat high violence against Aboriginal women and girls, including cases of murders and disappearances (CAT/C/CAN/Q/6/Add.1, paras. 76 ff), the Committee is concerned about ongoing reports that: (a) marginalized women, in particular Aboriginal women, experience disproportionately high levels of life-threatening forms of violence, spousal homicides and enforced disappearances; and (b) the State party failed to promptly and effectively investigate, prosecute and punish perpetrators or provide adequate protection for victims.

Furthermore, the Committee regrets the statement by the delegation that the issues on violence against women fall more squarely within other bodies' mandate and recalls that the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in acts of torture or ill-treatment committed by non-State officials or private actors (arts. 2, 12, 13 and 16).⁶

The State party should strengthen its efforts to exercise due diligence to intervene to stop, sanction acts of torture or ill-treatment committed by non-State officials or private actors, and provide remedies to victims. The Committee recommends that the State party enhance its efforts to end all forms of violence against aboriginal women and girls by, inter alia, developing a coordinated and comprehensive national plan of action, in close cooperation with aboriginal women's organizations, which includes measures to ensure impartial and timely investigation, prosecution, conviction and sanction of those responsible for disappearances and murder of aboriginal women, and to promptly implement relevant recommendations made by national and international bodies in that regard, including the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, and the Missing Women Working Group.

To implement these recommendations, we recommend that Canada establish a national inquiry into the murders and disappearances of Aboriginal women and girls, as requested by the Native Women's Association of Canada and the Assembly of First Nations. It is essential now that the development of a national action plan be grounded in, and shaped through, a thorough and careful examination of the root causes of the violence, including the historic discrimination and the disadvantaged social and economic conditions of Aboriginal women and girls that make them vulnerable to extreme violence.

The terms of reference for a national inquiry should be developed through consultation with the Native Women's Association of Canada and other Aboriginal and women's

⁶ We note that Canada took exception to the CAT considering this crucial matter of the murders and disappearances of Aboriginal women and girls, despite the Committee's clarification in General Comment No. 2 (CAT/C/GC/2, 24 January 2008, *Implementation of Article 2*, at para. 18) that CAT requires states parties to act with due diligence to prevent and remedy torture and ill-treatment by third parties. General Comment 2 is online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>

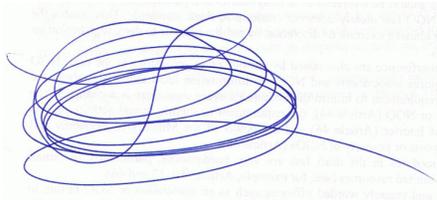
organizations. Full participation of these organizations, with funded counsel of their own choosing, must be assured at the inquiry. A credible and effective national action plan cannot be developed in the absence of an examination of the extent and nature of the violence and its root causes, of police and justice system responses that have historically been contributing factors, and of the responses needed from police and the justice system to ensure remediation. We repeat here, and endorse, the recommendations made by the Native Women's Association of Canada and the Canadian Feminist Alliance for International Action to the Inter-American Commission on Human Rights in March 2012:

- ...Canada should initiate an inquiry into the disappearances and murders of Aboriginal women and girls throughout the country that will lead to the design of national, cross-jurisdictional mechanisms and protocols for police and justice officials. This national inquiry should include a review of practices and measures related to child welfare, social assistance, housing, criminal justice, policing, and incarceration and identify where systemic correction is needed to dismantle institutionalized sexism and racism.
- ...Canada should develop a national action plan to address the crisis of violence against Aboriginal women and girls, in partnership with NWAC and other Aboriginal and women's organizations.
- ...Canada should design and implement appropriate policies to ensure inter-jurisdictional and inter-agency coordination of policing and law enforcement, with a view to preventing disappearances and violence against Aboriginal women and girls and producing faster and more efficient response times.
- ...Canada should cooperate with civil society groups endeavoring to end violence against Aboriginal women and girls in Canada and ensure that Aboriginal women's organizations, Aboriginal organizations, and communities have stable and adequate funding so that they can participate fully and take the lead in the development of policies that affect them.
- ...Canada...should ensure that individuals and groups, particularly Aboriginal women, are granted standing and receive public funding in order to guarantee full and robust participation in a national inquiry and any other related commissions or inquiries that may arise in the future. Participants should also be ensured the right to choose their own representatives within the inquiry.
- ...Canada should ensure that Aboriginal women and girls have access to legal aid and other funding so that they are free to exercise their right to choose their own representatives so as to participate fully and adequately in any sort of legal or administrative process in which their rights are being determined or affected.⁷

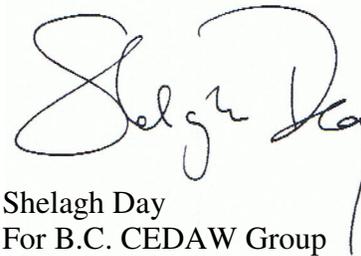
⁷ Native Women's Association of Canada, Canadian Feminist Alliance for International Action, and University of Miami Human Rights Clinic, *Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada, Briefing Paper for Thematic Hearing before the Inter-American Commission on*

- ...Canada should immediately develop and implement a strategy to address the disadvantaged social and economic conditions of Aboriginal women and girls, including poverty, inadequate housing, low educational attainment, inadequate child welfare policies, and over-criminalization.
- ...Canada should establish improved accountability mechanisms for both federal and provincial police forces that include both civilian oversight and civilian investigation, particularly for adherence with constitutional requirements of equal protection and access to justice.
- ...Canada's Department of Justice should establish a mechanism for investigating allegations of misconduct or discrimination within the federal, provincial or territorial components of the criminal justice system, and holding accountable those entities who commit acts of misconduct or discrimination.

Sincerely,



Gail Davidson
Executive Director, LRWC



Shelagh Day
For B.C. CEDAW Group

Human Rights, 144th Period of Sessions, March 28, 2012, online at:
<http://www.nwac.ca/sites/default/files/imce/IACHR%20Canada%20Briefing%20Paper%20March%2028%2C%202012.pdf>