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Committee on the Elimination of Discrimination against Women

Report of the inquiry concerning Canada of the Committee on 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]

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

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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, should the Committee receive reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention, the Committee is to invite that State party to cooperate in the examination of the information and to that end to submit observations with regard to the information concerned. Subsequently, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory. An inquiry is to be conducted confidentially by the Committee and the cooperation of the State party is to be sought at all stages of the proceedings.

2. Canada 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 non-governmental organizations with regard to missing and murdered aboriginal women

3. The Committee received letters from the Feminist Alliance for International Action, dated 17 January 2011 and 12 September 2011, and a letter from the Native Women's Association of Canada, dated 20 September 2011, requesting that the Committee initiate an inquiry under article 8 of the Optional Protocol into alleged grave and systematic violations by the State party of rights set forth in the Convention, namely that: aboriginal women and girls experience extremely high levels of violence in Canada, as shown by the high number of disappearances and murders of aboriginal women in particular; they report rates of violence, including domestic violence and sexual assault, that are 3.5 times higher than those for non-aboriginal women; young aboriginal women are five times more likely than other Canadian women of the same age to die as a result of violence; and aboriginal women and girls experience high levels of sexual abuse and violence in their families and communities and in society at large. The non-governmental organizations submitted information on the social and economic conditions of aboriginal women and girls, which put them at a disadvantage and 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 or to protect aboriginal women and girls from other forms of violence.

4. The above-mentioned non-governmental organizations denounced the reluctance of the State party to treat violations of the 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 to address the root causes of the violence, and the identified failures of the police and the justice system to prevent the violence, provide protection from it and respond effectively to it when it occurs; and (b) a national public inquiry into missing and murdered aboriginal women. The non-governmental organizations also

denounced the absence of a coordinated structure or broad policies to address the issues.

5. The Native Women's Association of Canada 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 those cases occurred in the western provinces and urban areas. Since 2010, it was able to collect further information on approximately 80 additional cases that occurred in the period up to September 2013. Apart from the "known cases" of missing and murdered aboriginal women, the Association believes that, to a large extent, the number of missing and murdered aboriginal women exceeds the number of documented cases.

6. According to information from the Native Women's Association of Canada, two thirds of the disappearances and deaths of aboriginal women occurred in the provinces of British Columbia, Alberta, Manitoba and Saskatchewan. In British Columbia, the Association provided documentation on 160 cases of aboriginal women and girls who went missing or were murdered between the 1960s and 2010, which is significantly more than in any other province or territory in the State party. That province also had the highest number of unsolved cases of murders of aboriginal women and girls. The notorious 724-kilometre stretch of Highway 16 between Prince George and Prince Rupert in British Columbia is referred to as the "Highway of Tears", because of the murders and disappearances that have occurred in its vicinity.

7. The Native Women's Association of Canada indicated that, as at 2010, nearly half of the 582 cases remained unsolved, whereas the overall number of resolved homicide cases in the State party is about 80 per cent. It found that the 153 cases of murders of aboriginal women committed between 2000 and 2008 represent approximately 10 per cent of the total number of female homicides in the State party during that period, although aboriginal women make up only 3 per cent of the total female population. The Association 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 requests for an inquiry made by the Native Women's Association of Canada and the Feminist Alliance for International Action, letters in support of conducting an inquiry were received by the Committee in October 2011 from the Opposition Caucus of the Legislative Assembly of British Columbia and the following non-governmental organizations: the Union of British Columbia Indian Chiefs, the Pivot Legal Society, the British Columbia Civil Liberties Association, the West Coast Legal Education and Action Fund, the Ending Violence Association of British Columbia, the Native Youth Sexual Health Network and the Downtown East Side Neighbourhood Council. The Committee also received a letter from the Downtown Eastside Women's Centre on the same matter. In March 2012, the Committee received a letter from the Canadian Association of Social Workers indicating that Canada does not yet have in place a coordinated national plan of action to address the root causes and remedy the consequences of the violence against aboriginal women and girls or a national strategy for investigating the ongoing violence against aboriginal women.

9. The Committee also received letters and information from five members of Parliament asking that they conduct an inquiry and highlighting: (a) the disproportionately high rates of missing and murdered aboriginal women; (b) the

lack of interest of the Government in investigating those cases; (c) the structural issues within the criminal justice system of the State party; and (d) the Government's refusal to deal with the root causes of violence against aboriginal women.

III. Procedural history

A. Reporting procedure

10. During its forty-second session, the Committee considered the combined sixth and seventh periodic reports of the State party (CEDAW/C/CAN/7) on 22 October 2008, before the start of the inquiry procedure, and requested in its concluding observations that the State party submit follow-up information, within one year, on the recommendations (paras. 32 and 53) that the State party: (a) examine the reasons for the 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 been murdered in recent decades; and (c) carry out an analysis of those cases in order to determine whether there is a racial component to the disappearances and take measures to address the problem should that be the case.

11. On 9 February 2010, the Committee received the follow-up report of the State party (CEDAW/C/CAN/CO/7/Add.1 and Corr.1), with a three-month delay. At its forty-sixth session, held from 12 to 30 July 2010, the Committee considered that the above-mentioned recommendations had not been implemented. In a letter dated 25 August 2010, the Committee requested additional information from the State party, which it received on 8 December 2010. At its forty-eighth session, held from 17 January to 4 February 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 elaboration of 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. At its fiftieth session, held from 3 to 21 October 2011, the Committee decided to discontinue the follow-up procedure, given that the State party had failed to provide additional information. The Committee decided to consider the information submitted on the issue of violence against aboriginal women pursuant to article 8 of the Optional Protocol.

B. Inquiry procedure

13. Also at its fiftieth session, the Committee examined the information received from non-governmental organizations and considered that it was reliable and indicative of grave or systematic violations by the State party of rights set forth in the Convention. The view of the Committee was corroborated by information received by the Committee on the Elimination of Racial Discrimination under that

Committee's reporting procedure and by information received by the Special Rapporteur on the rights of indigenous peoples. Accordingly, at its fifty-first session, held from 13 February to 2 March 2012, the Committee submitted to the State party the information it had received from non-governmental organizations and invited the State party to submit its observations with regard to the information received, pursuant to article 8 (2) of the Optional Protocol, within two months.

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 independently and with due diligence 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 in which aboriginal women or girls were reported missing or murdered; (d) the State party was of the view that resources would be better expended on taking action to address the issue than on developing a national action plan; and (e) it had continued to take steps to improve the socioeconomic situation of aboriginal women and girls which makes them vulnerable to violence. The State party argued that there was no evidence that any of its actions or omissions had constituted grave or systematic violations of rights set forth in the Convention and, therefore, an inquiry by the Committee was not warranted.

15. At is fifty-second session, held from 9 to 27 July 2012, the Committee, on the basis of all information before it, including the State party's observations and the relevant conclusions of other treaty bodies and special procedures mandate holders, decided to establish and conduct an inquiry, in accordance with article 8 (2) of the Optional Protocol and rule 84 of its rules of procedure, designate three Committee members for that purpose and seek the consent of the State party to 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 consented to a visit to its territory by the designated members of the Committee. Due to the late answer of the State party, the Committee decided to postpone the visit planned for the second quarter of 2013 to the period from 9 to 13 September. On 15 July, 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 secretariat of the Committee sent the State party a background note, which included the general principles guiding the visit and indicated that the designated members aimed at collecting further information on the fulfilment of the State party's responsibilities, including the responsibility of due diligence, to: (a) prevent violence, protect aboriginal women and investigate cases of missing and murdered aboriginal women; (b) prosecute and punish the perpetrators of violence against aboriginal women and the disappearances and murders of aboriginal women; and (c) provide redress to aboriginal women who are victims of violence and to the families of missing and murdered aboriginal women. In their note, the Committee stressed the importance of enabling the designated

members to conduct the confidential inquiry in an independent and impartial manner, ensuring their freedom of movement and facilitating their meeting with all stakeholders confidentially.

19. Two of the three designated members, Barbara Bailey and Niklas Bruun, accompanied by two staff members of the secretariat, visited Canada from 9 to 13 September 2013.

20. On 4 September 2013, 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 population extends throughout Canada and includes: First Nations communities, to a large extent living on reserves; Inuit communities, located in the Nunavut and Northwest Territories, the regions of Northern Quebec (Nunavik) and Labrador; Métis communities; and communities of aboriginal peoples (including Métis, Inuit and First Nations peoples) in cities or towns that are not part of reserves or traditional territories. There are more than 2,400 reserves, 600 First Nations, and about 60 aboriginal languages. In 2011, 1.4 million people in the State party reported as having an aboriginal identity, representing 4.3 per cent of the total population.

22. The Royal Commission on Aboriginal Peoples estimates that, since the beginning of the colonial period in the State party, from the time of first contact to confederation, the population of aboriginal peoples has decreased by 80 per cent. Some cultures, such as the Beothuck in Newfoundland, became extinct, whereas other peoples endured forced displacement from their traditional lands and assignment to small reserves in which maintaining traditional forms of sustenance was often impossible. The establishment of reserves was based on historical treaties, from 1701 to 1923, between the State party (and prior to that, the British Crown) and the aboriginal people.

23. The State party accepts the fact 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 the 1800s, the Government of the State party strengthened its assimilation efforts by establishing residential schools for indigenous children and obliging parents to send their children to them. The educational experience of aboriginal children has been marked, therefore, by the residential school system, which has caused profound and long-lasting damage to generations of aboriginal children who grew up there, alienated from their cultures and languages, and had devastating effects on the maintenance of their indigenous identity. Many of the children were victims of physical and sexual abuse by residential school staff. The intergenerational impact of the 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, given that historically, the system has shaped aboriginal communities and resulted in the break-up of families and communities.

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

25. Section 35 of the Constitution Act of 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples in the State party. The Committee on the Elimination of Racial Discrimination recently noted that the right to consultation, as provided for in legislation, and the right to free, prior and informed consent regarding matters that affect the aboriginal community, such as projects and initiatives, were not fully applied by the State party and may be subject to limitations. It also noted that the aboriginal community was not always consulted for projects that were conducted on their lands or that affected their rights and that treaties with aboriginal communities were not fully honoured or implemented. Passing legislation that erodes the treaty rights of the aboriginal community without duly consulting it as per section 35 of the Constitution Act of 1982 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 persistently high level of poverty in the aboriginal population and the persistent marginalization and difficulties faced by them in acquiring access to employment, housing, drinking water, health services and education, as a result of continued structural discrimination. The Special Rapporteur on the rights of indigenous peoples has indicated that First Nations communities are systematically underfunded compared with non-aboriginal towns and cities. The Auditor General of Canada has highlighted the significant funding disparities between on-reserve services and those available to other Canadians, and the Canadian Human Rights Commission has indicated that, for decades, studies have collected testimonies of the social injustice faced by the aboriginal community on- and off-reserve.

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[2] See, for example, communication No. 24/1977, *Sandra Lovelace v. Canada*, views adopted on 30 July 1981.

[3] For example, the Jobs and Growth Act of 2012 changes numerous provisions in various pieces of legislation and regulations, including the Indian Act. In reaction to the issue that some of the changes surrender treaty lands and territory too readily, the initially grass-roots movement known as "Idle No More" grew into a global protest movement.

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 and provincial levels. Whereas the federal Government has exclusive and complete jurisdiction over the territories, it has delegated some of its powers to the governments of the Northwest Territories and Yukon.

28. Section 91 of the Constitution Act of 1867 regulates the legislative distribution of powers between the federal and provincial/territorial levels. Under section 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. Regarding members of aboriginal communities living in urban areas, that is off-reserve, there is some overlap, depending on the subject matter, as they may fall within the jurisdiction of either the provinces and territories, the federal government, or both. Members of aboriginal communities living off-reserve, however, have the possibility of benefitting from the same programmes and services as other citizens.

29. Whereas some concurrent powers are specifically mentioned in sections 94 and 95 of the Constitution Act of 1867, in practice, certain areas of government action that are not specifically identified and assigned to one or both levels of government have become concurrent or shared powers between the two levels. As the Constitution does not explicitly distribute powers in all areas, there is a certain degree of overlap and flexibility between the federal and provincial/territorial jurisdictions 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 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] Furthermore, section 36 of the Constitution Act of 1982 provides for safeguards regarding promoting equal opportunities and reducing regional disparities in opportunity, with a view to ensuring government commitment to promoting equal opportunities.[5] In particular, section 36 (2) commits the federal Government to redressing regional disparities in the provision of public services.[6] That provision operationalizes the agreement of the federal and provincial levels of government to share resources in order to maintain social programmes and public

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4 Section 91 states that 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) reads as follows: "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".

services of sufficient quality in the State party and ensure nationwide standards in that regard, through the Government's programme of equalization.[7]

30. According to section 91 (27) of the Constitution, criminal law is under the sole responsibility of the federal Government. The administration of justice, however, is grounded as a provincial matter pursuant to section 92 (14).[8] Provinces are also responsible for providing police services to enforce municipal, provincial and federal criminal laws, but most provinces and territories (with the exception of Ontario and Quebec) have contracted with the federal Government for the services of the national police.

31. The national police perform three separate policing functions, at the federal, provincial and municipal levels. Municipalities can have their own independent police forces, such as the Vancouver Police Department in the City of Vancouver. Municipalities that cannot afford to maintain an independent police force contract with the federal Government for the services of the national police, which is the case for most municipalities in which there are aboriginal communities. Through the First Nations Policing Program, the Ministry of Public Safety currently provides policing services to certain First Nations communities.

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

A. Background

32. The State party submitted that it recognizes and takes very seriously the significant issue of violence against aboriginal women and girls and has taken specific 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 those measures have resulted in positive outcomes for aboriginal women and girls and members of their families. While many challenges remain, the State party submitted that all levels of government are working together with communities, civil society and aboriginal citizens to address the challenges and to make life safer for all citizens of the State party.

33. Furthermore, the State Party recalled that it has in place a strong framework for the protection and promotion of human rights, from the British North America

[7] Equalization is the Government of Canada's transfer programme 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) provides that: "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 to the Committee on 14 June 2012. Prior to the visit of the designated experts, it submitted information on 4 September 2013 and, 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 the Committee with the 2014 report of the Royal Canadian Mounted Police, entitled "Missing and murdered aboriginal women: a national operational overview". Information in this section is based on those documents and information collected by the designated experts from representatives of the State party during their visit to Canada.

Acts to the many laws, programmes, policies and institutions in place across the country. It stated that it is an open and tolerant society that values individual rights and is committed to recognizing the rights of every person and all peoples, including aboriginal peoples, to be safe and seek success and economic prosperity.

34. The State party: (a) acknowledged the higher level of violence against aboriginal women and the disturbing number of missing and murdered aboriginal women and girls and indicated that significant steps had been and were being taken to address those issues; (b) indicated that it continued to take steps to improve the socioeconomic situation of aboriginal women and girls; and (c) added that, in the light of the measures being taken to address that serious problem, there was no evidence that any of its actions or omissions constituted grave or systematic violations of rights set forth in the Convention.

35. The State party indicated that the Committee does not have jurisdiction *ratione temporis* to address the alleged violations that took place before 2003, when the Optional Protocol came into force.

B. Root causes

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

37. The State party argued that the vulnerabilities to violence of aboriginal women and girls could be associated, more generally, with some of the effects of intergenerational trauma on 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 residential school system, which operated for more than a century and played a central role in the 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 residential schools. It indicated that, while attending those schools, many children had been subjected to a variety of abuses and had been forbidden to speak their traditional languages or practice their culture. The State party admitted that residential schools had resulted in further cultural loss, including the loss of parenting skills and language. It stated that the impacts of these schools on aboriginal families and communities were believed to have been far-reaching and intergenerational.

38. The State party has taken significant measures with a view to forging renewed relationships with the aboriginal community and addressing the adverse legacies of the colonial and post-colonial period. In June 2008, the Prime Minister addressed a formal apology to the former students of residential schools, their families and communities for the State party's role in the operation of the residential school system and acknowledged that the complex history and legacy of residential schools had contributed to social problems that continue to affect many aboriginal communities. The State party established the Truth and Reconciliation Commission of Canada and committed to building relationships based on the knowledge of a shared history. Furthermore, considerable progress was made with the repeal of

section 67 of the Canadian Human Rights Act, in 2008, which came into force in 2011 and which had until then prevented the filing of complaints of discrimination resulting from the application of the Indian Act.

C. General actions for prevention and protection

39. In its submission, the State party mentioned that violence against aboriginal women and girls was linked to socioeconomic disadvantages, which rendered aboriginal women more vulnerable to exploitation and abuse, and that any effective solutions to curb violence against missing and murdered women must address those root causes.

40. The Government has developed and given substantial funding to a number of projects to combat violence against women. Some of the projects specifically target aboriginal women, whereas others include components on violence against aboriginal women. The projects included the following: (a) Status of Women Canada approved the provision of funding to the Native Women's Association of Canada 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 24 aboriginal communities with a view to reducing violence and improving the safety of aboriginal women.

41. The family violence component under the Justice Partnership and Innovation Program of the Department of Justice grants funding to aboriginal organizations to develop materials for the general public on the importance of breaking the intergenerational cycles of violence and abuse that affect aboriginal communities. The Ministry of Aboriginal Affairs and Northern Development developed a family violence prevention programme, providing operational funding to a network of 41 shelters in First Nations communities and support for community-based prevention projects. In 2011-2012, the Program supported approximately 302 prevention projects based on proposals from the community. The Canada Mortgage and Housing Corporation provides funding to create new and repair or improve existing shelters for women, children, and young people who are victims of family violence. From 2008 to September 2013, federal funding provided for almost 4,357 shelter units and beds, including 299 on-reserve, for victims of family violence. In June 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, safe houses and 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 more than 110 languages, including 17 aboriginal languages.

43. The State party indicated that the Ministry of Aboriginal Affairs and Northern Development provided significant funding to meet on-reserve housing needs and that the Canada Mortgage and Housing Corporation supported the on- and off-reserve housing needs of aboriginal households. Through the Ministry and the Corporation, the Government invests an estimated $300 million annually to address on-reserve

housing needs. Between 2006-2007 and 2012-2013, the annual investments contributed to the construction of about 1,625 new houses and the renovation of 3,000 existing houses. In 2013, the Corporation's funding supported: the construction of 546 new units, the renovation of 1,068 existing houses, the provision of ongoing subsidies for the capacity-building of some 28,800 households living in existing social housing and the delivery of 183 capacity development training sessions to peoples of First Nations. Ninety per cent of the Corporation's on-reserve programmes and services are delivered by members of aboriginal groups. Some $116 million is also provided annually to support the off-reserve housing needs of aboriginal households. The State party also indicated that it had invested in building and renovating on-reserve water infrastructure, supported the development of a long-term strategy to improve water quality in First Nations communities and introduced the Safe Drinking Water for First Nations Act, in 2012, to ensure that the peoples of First Nations have access to safe drinking water. In 2010, the State party announced a five-year funding commitment to renew key aboriginal health programmes to address the high rate of diabetes, reduce the rate of youth suicide and support families with young children. The State party developed the federal framework for aboriginal economic development, in 2009, and the aboriginal skills and employment training strategy, which supports employment programmes and services geared towards the needs of aboriginal peoples.

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

45. The State party was of the firm view that government and police officials had addressed the matter of violence against aboriginal women in a strategic, coordinated and collaborative manner. It did not see any need, therefore, 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 with their ability to respond to crime-related issues and 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, referred to as the missing women working group, to review issues related to the high number of missing and murdered women in the State party. According to the report, the working group included members from the justice and public safety departments of the federal Government and the provinces of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan. The working group released a summary report in 2010 and a comprehensive report, containing 52 recommendations, in 2012.

48. The State party indicated that, in 2010, the federal Government had announced a five-year investment plan to support a seven-point strategy aimed at improving the response of law enforcement agencies and the justice system in handling cases of missing and murdered aboriginal women and girls, meeting the needs of aboriginal families and increasing community safety. The commitment included a number of significant national police and public safety initiatives, many of which were aimed at widely addressing the issue of missing and murdered persons, without specifically focusing on aboriginal women. As part of the strategy, the national police launched a national public website for missing persons and unidentified human remains in January 2013.

49. In December 2011, the national police and the Assembly of First Nations signed a joint agreement to work collaboratively on issues related to missing and murdered aboriginal persons in the State party. In March 2013, the national police and the Native Women's Association of Canada partnered on a hitchhiking prevention 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 conducted a study on the nature and extent of violence against aboriginal women, and the final recommendations were issued in December 2011. In 2013, a special parliamentary committee on violence against indigenous women was established to conduct a study on the high rates of missing and murdered aboriginal women in the State party. It conducted meetings and interviews from March to June 2013, and its report was released in March 2014. The report covered the scope and severity of violence against aboriginal women and girls in the State party, the root causes of violence and violence prevention, the protection of victims of violence and support to the families of victims. It summarized the views of the witnesses heard, provided 16 recommendations and concluded by urging the federal Government to implement all of the recommendations in a coordinated action plan.

51. At the provincial level, initiatives in Alberta, British Columbia and Manitoba are of particular relevance given the high rates of missing and murdered women in those provinces. The North District Division of the Royal Canadian Mounted Police, in Prince George, British Columbia, has supported the expansion of the rural crime watch programme to include a highway watch along Highway 16 through the establishment of a toll-free crisis line.

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

53. With regard to child welfare, the State party indicated that the Ministry of Aboriginal Affairs and Northern Development is implementing an enhanced prevention-focused approach, which provides funding for on-reserve child and family services that provide additional support and tools for parents to better care for their children and prevent situations of protection from developing. It also indicated that the number of children being placed into approved foster care has decreased since 2009, as compared with the numbers of children being placed as non-wards, with extended family or with persons of sufficient interest, which have increased.

54. In its responses to the Committee's questions in follow-up to the country visit, the State party described a series of initiatives taken by several provinces and territories to raise awareness of the discrimination faced by aboriginal communities, which included, in Quebec, updating the media information kit on domestic violence and proclaiming the month of June as aboriginal history month and, in Manitoba, developing a resource guide for teachers.

55. Canadian law criminalizes communication in a public place for the purpose of engaging in prostitution, which applies to women who engage in prostitution and their clients. 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 keeping a common bawdy house, section 212 (1) (j) on living on the avails of prostitution of another person, and section 213 (1) (c) on communicating in a public place for purposes of prostitution.

56. The federal Government put in place several measures on prostitution, including the establishment of the National Crime Prevention Centre, which intervenes at a preventive stage and has projects to assist persons exiting the sex industry. The government of British Columbia developed a programme that provides services to assist women who are victims of violence and/or abuse and women leaving the sex trade in the cities of Vancouver, Prince Rupert, Duncan and Burnaby. The Vancouver Police Department participated in a project aimed at improving the safety of marginalized women in the Downtown Eastside of Vancouver. The national police in Winnipeg developed an exploited persons proactive strategy as part of the project to help minimize the risk and reduce the incidence of crimes against persons vulnerable to exploitation, including aboriginal women exploited in the context of prostitution.

57. The State party has in place 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, and it has added additional protection at the provincial level; an example of a particularly good practice is the Child Sexual Exploitation and Human Trafficking Act, adopted in April 2012, in Manitoba. The State party established a Human Trafficking National Coordination Centre, in 2005, to monitor and coordinate anti-trafficking law enforcement efforts relating to prevention, protection and prosecution and created six regional Royal Canadian Mounted Police Human Trafficking Awareness Coordinator positions. Cultural sensitivity training relating to the specific needs of the aboriginal community was given at several offices of the Centre.

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 knowledge about how human trafficking plays out in the State party, including in aboriginal communities, and that much of the information in this area is anecdotal. Training has been provided to law enforcement personnel and the judicial authorities on how to respond to the ongoing vulnerability of aboriginal and immigrant women. The action plan identifies the most at-risk populations and locations and provides for information gathering on 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 young people and women. The action plan recognizes: (a) the disproportionately high percentage of aboriginal young people disconnected from their families and at 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 young people 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. Representatives of aboriginal organizations are members of the committee, given that human trafficking in the State party disproportionately affects aboriginal women and girls in the province. The Assembly of Manitoba Chiefs was given funding to raise awareness and develop recommendations on the issues of human trafficking and sexual exploitation among First Nations communities in the province. Furthermore, during the country visit, the State party indicated its intention to undertake research on the trafficking of aboriginal women.

E. Police initiatives to improve investigations into missing and murdered aboriginal women

60. Submissions received from the State party indicate that a number of initiatives have been taken at the federal and provincial levels to improve the performance of the Canadian police forces in the investigating and handling of cases of missing and murdered aboriginal women and girls. In 2012, the national police issued a national best practices document, compiled by the National Centre for Missing Persons and Unidentified Remains, for the investigation of such cases. The document applies in all national police 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 and defining accountabilities throughout the process for supervisors and managers. According to the State party, the directives addressed areas that 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 best practices provide 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) missing person complaints will be accepted and acted upon by any national police detachment, regardless of the jurisdiction. Additional procedures have been developed by the national police for specific regions or divisions, including Manitoba and British Columbia. The national police are currently developing a strategy to develop a standardized organizational approach to missing person investigations that will focus on accountability, partnerships, prevention and supporting families. The National Centre for Missing Persons and Unidentified Remains is currently developing a training programme for investigators, which will include online components and in-class training.

61. Several integrated police task forces have been established to investigate the outstanding cases of missing and murdered aboriginal women in different areas of the country. In British Columbia, Project Even-Handed, which is now closed, was established for cases in Vancouver, and Project E-PANA, active since 2005 in Prince

George, is currently investigating 18 cases that date from 1969 to 2006 (13 homicides and five disappearances). Project KARE was established in Alberta in 2003. Since 2011, Project Devote, in Manitoba, has investigated 28 cases that date back to 1961. Saskatchewan supported a task force that investigated cases of missing persons in 2005 and 2006, which resulted in the creation of the Provincial Partnership Committee on Missing Persons. In Yukon, the police are 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. In 2004, the province of British Columbia established the British Columbia Missing Persons Centre, a centre of expertise for missing person investigations. In the Vancouver area, following the conclusion of the investigations of the murders committed by Robert Pickton, a comprehensive audit of the Vancouver Police Department was conducted and extensive reforms were undertaken. Moreover, both Alberta and Manitoba have enacted Missing Persons Acts, in 2011 and 2013, respectively, to facilitate and improve police response in cases of missing persons.

63. As of October 2013, the national police included 1,170 regular male members and 319 regular female members who were aboriginal, representing 6.3 per cent of male regular members and 1.7 per cent of female regular members. To increase the cultural sensitivity of the police, efforts have been developed to recruit aboriginal people into the police forces.

64. National police members attend a half-day generic programme on sensitivity to and awareness of aboriginal culture during their initial training at the cadet training academy. They also have access to continuing education opportunities during their career, which includes training on bias-free policing.

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

66. Following the adoption, in 2013, of the Enhancing Royal Mounted Police Accountability Act, the Commission for Public Complaints Against the Royal Canadian Mounted Police was replaced by the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police during the course of 2014, with the aim of improving the transparency and accountability of investigations of serious incidents involving national police members. In accordance with the new law and the external investigation or review policy, cases of serious incidents involving a national police employee are referred to a provincially established regime, if it has jurisdiction over national police conduct, or to the Complaints Commission, which will conduct the investigation through an external law enforcement agency or other duly authorized investigative agency. The national police, where authorized by provincial statute, allow provincial investigation units to investigate national police actions resulting in death, serious injury or in sensitive cases such as allegations of sexual assault or corruption. Provincial special investigation units exist in British Columbia (Independent Investigations Office), Alberta and Nova Scotia. Manitoba and Quebec are planning to create 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 has been in effect since 1991, the number of aboriginal women in prison has steadily increased since that time. To address the socioeconomic and cultural challenges faced by aboriginal people in acquiring access to justice and legal services, the Department of Justice has provided federal funding, since 1978, for the aboriginal court worker programmes, which have benefitted approximately 20,000 aboriginal women per year.

68. The 2010-2015 mandate of the Justice Partnership and Innovation Program of the Department of Justice has a component on providing access to justice for aboriginal women to support the development of school- and community-based pilot projects aimed at reducing the vulnerability to violence of high-risk young aboriginal women and girls. Through the First Nations Policing Program, the Ministry of Public Safety provides funding to provinces to support policing services in First Nations and Inuit communities, in which most of the police services are provided by national police contingents.

69. In its submission of 15 January 2014, the State party provided information on the training of judges and prosecutors on cultural sensitivity and social context regarding issues relating to aboriginal peoples.

F. Data collection

70. The State party envisaged that the National Centre for Missing Persons and Unidentified Remains, established in 2011 and run by the national police, would create the first national database for missing persons and unidentified remains accessible across jurisdictions by the end of 2013, but its development is ongoing. In May 2011, the Canadian Police Information Centre, which is accessible in all police jurisdictions, added new fields to the database, including aboriginal identity, in order to allow the police to better record such information.

71. In February 2013, the National Aboriginal Policing Services of the Royal Canadian Mounted Police led the national police in a file review across jurisdictions. Each division of the Royal Canadian Mounted Police conducted a review of cases of missing persons that occurred from 1940 to 2013. The police also conducted a review of the number of aboriginal women murdered between 1932 and 2013, which validated 327 homicides, 98 (30 per cent) of which are still under investigation. The State party noted, however, that the national police solve rate for homicides of aboriginal women for the period 2006-2012 is 82 per cent, whereas it is 88 per cent for homicides of non-aboriginal women for the same period. In its May 2014 national operational overview report, the Royal Canadian Mounted Police indicated 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 per cent".

72. In the same report, the national police also indicated that there were 164 missing aboriginal women as at 4 November 2013, which is approximately 11.3 per cent of the total number of missing women (1,455 total), adding that the total number of missing aboriginal women in the data set used may be different from the actual number, owing to factors including a missing woman not having been identified as

aboriginal during the investigation and a disappearance not having been reported to police. It further indicated that, out of the 164 missing aboriginal women, 64 per cent (105 individuals) are considered to have disappeared in suspicious or unknown circumstances and 36 per cent (59 individuals) in non-suspicious circumstances.

G. Efforts regarding prosecution and reparation

The British Columbia Inquiry

73. The Missing Women Commission of Inquiry was established by the government of British Columbia in 2010 and mandated to review the police investigations of women reported missing from the Downtown Eastside of Vancouver between 1997 and 2002, the circumstances surrounding the 1998 decision of the Criminal Justice Branch of the Department of Justice of British Columbia to stay the charges, in a related serious incident, against Robert Pickton, who has since been convicted of six counts of second-degree murder. The government of British Columbia identified the need for the Commission of Inquiry because it recognized that there were lessons to be learned from those cases of missing and murdered women.

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

75. The Government assisted the Commission of Inquiry by providing a large volume of documents related to the involvement of the national police in the investigations into the missing women and by facilitating the provision of evidence from national police members who were involved in various aspects of those investigations.

76. The report of the Commission of Inquiry was released on 17 December 2012 and was welcomed by both the federal Government and the government of British Columbia. The report contains a large number of recommendations directed at the Province of British Columbia, and many of them involve collaboration and consultation with other entities, such as the City of Vancouver, the Vancouver Police Department, the national police and other agencies. The government of British Columbia has outlined a process for consideration of the recommendations.

77. In November 2013, the Department of Justice of British Columbia issued a status report on the implementation of the recommendations contained in the report of the Commission of Inquiry.

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 the provision of services to victims of crime and compensation for criminal injuries. The federal Government's role focuses on enforcement and maintenance of the Criminal Code and the Corrections and Conditional Release Act. The specific services offered to victims vary between jurisdictions, and some of them have a comprehensive victims' bill of rights, such as the one in Manitoba through which rights are legislated and enforceable.

79. Building on existing efforts at the provincial and territorial levels, 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 people who are 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 adapting the existing victim services to the unique needs of aboriginal families. For example, in Yukon, the Sisters in Spirit project, which includes the participation of members of the national police, the provincial government and civil society organizations, has developed a comprehensive toolkit targeting aboriginal communities. The toolkit covers the steps to take when reporting a crime and includes advice on police 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 the families of missing persons. Through Project Devote, a family liaison officer post has been created with a view to ensuring sustained contact between the investigation team and families and assisting the latter in navigating the justice system. The Victims Services Branch of the Ministry of Justice of Saskatchewan 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 level 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 those issues and that it continued to take steps to improve the socioeconomic situation of aboriginal women and girls. The State party submitted that addressing the underlying issues that contribute to the increased risk of violence faced by aboriginal women and girls was a complex matter which warranted coordinated attention at all levels of government. The State party further submitted that it had acted with the requisite due diligence to prevent violence against aboriginal women, investigate reports of the disappearances and murders of aboriginal women and bring perpetrators to justice, and that, in the light of the measures being taken to address that serious problem, there was no evidence that any actions or omissions by Canada constituted grave or systematic violations of rights set forth in the Convention. Furthermore, the State party submitted that its choice not to adopt a national action plan did not constitute a grave or systematic violation of rights set forth in the Convention. The State party concluded that the question before the Committee in the inquiry procedure should not have been whether it had 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 it had taken significant steps to address all of those matters. The State party submitted that, rather, the issue at the heart of the inquiry should be whether the remaining challenges and outstanding

cases amounted to a grave or systematic violation of rights set forth in the Convention.

VI. Country visit

82. During their visit to the State party, two designated members, Barbara Bailey and Niklas Bruun, visited Ottawa, Ontario, and Vancouver, British Columbia. In addition, former visited Whitehorse, Yukon, while the latter visited Prince George, British Columbia, and Winnipeg, Manitoba.

83. The visit was defined under the framework of collecting further information on the fulfilment of the State party's responsibilities, including the responsibility of due diligence:

(a) To prevent violence against aboriginal women, protect them and investigate the cases of missing and murdered aboriginal women;

(b) To prosecute and punish the perpetrators of violence against aboriginal women and the disappearances and murders of Aboriginal women;

(c) To provide redress to aboriginal women who are 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 the federal level, in Ottawa: the Minister of Aboriginal Affairs and Northern Development and senior officials from the Ministry; senior officials from the Canada Mortgage and Housing Corporation, the Ministry of Health, the Ministry of Employment and Social Development, the Ministry of Status of Women, the Ministry of Public Safety, the Department of Justice and the Royal Canadian Mounted Police;

(b) At the provincial/territorial and local levels:

(i) In Vancouver: representatives of the Ministry of Justice, the Ministry of Aboriginal Relations and Reconciliation, the Ministry of Public Safety and Solicitor General, the Royal Canadian Mounted Police and the Vancouver Police Department;

(ii) In Prince George: representatives of the Royal Canadian Mounted Police and the Legislative Assembly of British Columbia, as well as the Mayor of Prince George;

(iii) In Whitehorse: representatives of the Department of Justice, the Royal Canadian Mounted Police and the Public Prosecution Service of Canada;

(iv) In Winnipeg: the Deputy Premier/Minister of Aboriginal and Northern Affairs and representatives of the Department of Justice and the Royal Canadian Mounted Police.

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 Against the Royal Canadian Mounted Police, Ian McPhail, the Commissioner of the British Columbia Missing Women Commission of Inquiry,

Wally Oppal, and representatives of the British Columbia Minister's Advisory Council on Aboriginal Women and of the Yukon Sisters in Spirit project.

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

87. They met with representatives of the aboriginal community, including representatives of all five national aboriginal organizations (Assembly of First Nations, Congress of Aboriginal Peoples, Métis National Council, Inuit Tapirisat Kanatami and Native Women's Association of Canada) and regional aboriginal organizations from British Columbia, Manitoba and Ontario. The designated members also met with representatives of aboriginal women's organizations, women's human rights organizations and regional, national and international non-governmental organizations. They met with service providers for aboriginal people on- and off-reserve, professors from the Faculty of Law of the University of Ottawa, the Centre for Indigenous Governance of 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, dated 4 September 2013, the State party indicated that the Committee does not have jurisdiction *ratione temporis* to address the alleged historical violations that took place before 2003, when the Optional Protocol came into force.

89. In the same submission, however, the State party acknowledged that the past must be understood for its effects on the current situation, in its argument that a significant number of the cases (possibly 200 cases) had 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 the Vienna Convention on the Law of Treaties which provides 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 the State party, the examination of the cases occurring after 2003 includes the consideration of the continuing effects of the cases of missing and murdered aboriginal women that occurred before 2003. The continuing effects include the investigations or lack of investigations of all of the unresolved cases of missing and murdered aboriginal women, the long-term impact of those cases on the families of victims and the victims families' unaddressed requests for reparation, including rehabilitation, compensation, satisfaction and a guarantee of non-repetition. 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, has 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 an arbitrary historical borderline between events occurring before and after 2003. The Committee emphasizes, however, that when assessing whether there are grave or systematic violations by the State party of rights set forth in the Convention, its examination focuses on the actions and/or omissions of the State party that occurred after the entry into force of the Optional Protocol, in 2003.

VIII. Findings of fact

A. Background

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

(a) The response of the State party in its various submissions to the Committee;

(b) Information submitted by the non-governmental organizations that requested the inquiry;

(c) Information gathered from interviews conducted during the country visit with government officials, parliamentarians, representatives of independent bodies and non-governmental organizations, aboriginal leaders, academics and families of missing and murdered aboriginal women;

(d) Information from secondary sources, such as reports by Statistics Canada, the Federal Ombudsman for Victims of Crime and the missing women working group, *Forsaken: The Report of the 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 of the State party, reports and statements by the Special Rapporteur on the rights of indigenous peoples and reports by the United Nations, academia and civil society organizations.

94. With the aim of analysing all aspects of violence against aboriginal women, including missing and murdered aboriginal women, the findings of fact section covers the vulnerability of aboriginal women to violence due to the legacy of colonization, their disadvantaged socioeconomic situation, their reluctance to seek help from the authorities for fear that their children will be placed in foster care, and their vulnerability to prostitution and trafficking. It also covers the high levels of violence faced by aboriginal women from within and outside their 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 of the disproportionately high number of aboriginal women who are victims of violence in comparison with non-aboriginal women. Civil society organizations stated that aboriginal women and girls were far more likely than other Canadian women and girls to experience violence and to die as a result. They indicated, for example, that the rate is five times higher for

aboriginal women between 25 and 44 years of age than for non-aboriginal women in the same age bracket.

96. Civil society organizations indicated that, in 39 per cent of known cases of missing and murdered aboriginal women in which the background of the accused offender was known, the person charged was non-aboriginal. However, the organizations reported gaps in the data collected on the background of accused offenders, specifying that in 41 per cent of cases the background was unknown.

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

98. Civil society organizations stressed that some women's engagement in prostitution provided them with limited alternatives, which exposed them to a heightened risk of disappearance and murder. A vast body of research shows that the percentage of aboriginal women engaged in prostitution is disproportionately high. Census data from 2006 show that aboriginal women and men account for 3 per cent of the total adult population of the State party; however, the research indicates that, in some cities, between 50 and 70 per cent of women engaged in street prostitution are aboriginal. Other research shows that the proportion of women engaged in street prostitution who are aboriginal is 70 per cent in Winnipeg, 40 per cent in Vancouver and nearly 80 per cent in Downtown Eastside of Vancouver. The Committee notes that the disproportionally high rate of aboriginal women engaged in prostitution, an activity that renders them vulnerable to all forms of violence, the underlying socioeconomic causes of aboriginal women's vulnerability to prostitution and the link between prostitution and the disappearance and murder of aboriginal women are well known by the Government, based on the studies conducted in that regard.

99. The Committee further notes the State party's acknowledgement that the circumstances leading to the 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 symposiums on missing and murdered aboriginal women

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

101. Reports prepared at the federal level by the State party and received by the Committee included a report in 2011 by the Parliamentary Standing Committee on the Status of Women, which undertook a study on the nature and extent of violence against aboriginal women. The final recommendations that were issued in December 2011 were strongly criticized by the political opposition for not reflecting the full scope of the initial mandate of the study, for the limited fact-finding undertaken and

for not demanding a clear and coordinated federal response to prevent violence by addressing its root causes. A further initiative was undertaken by the missing women working group, with reports issued in 2010 and 2012. A third initiative was the release in March 2014 of the report of the Special Committee on Violence against Indigenous Women, entitled *Invisible Women: A Call to Action — A Report on Missing and Murdered Indigenous Women in Canada*. The report contains 16 fairly general recommendations, several of which reflect ongoing activities such as awareness-raising, support for victims and police services. The final recommendation, not yet implemented, calls on the federal Government to implement all the other recommendations through a coordinated action plan. This suggestion runs counter to the position of the State party in its observations and repeated by its representatives during the country visit, that a coordinated national action plan was not needed because a number of initiatives were already under way at both the provincial and the federal level. The Committee considers that, even if implemented, the coordinated action plan would not be comprehensive enough as the final recommendations of the Special Committee are too general in nature and fail to cover some major issues, including police misconduct. In any event, the report indicated a lack of consensus, as members representing the New Democratic Party and the Liberal Party expressed dissenting opinions.

102. At the provincial level, the Missing Women Commission of Inquiry was established in 2010 in British Columbia, given the magnitude of the problem of missing and murdered women in that province. Its mandate was, among other things, to examine the issue and make recommendations on the initiation and conduct of investigations into missing women and suspected multiple homicides, and on changes considered necessary with regard to homicide investigations in British Columbia that were conducted by more than one investigating organization. The inquiry was limited to investigations conducted between January 1997 and February 2002 in the Downtown Eastside of Vancouver, which is the most poverty-stricken area in the State party and in which 80 per cent of street prostitutes are aboriginal. The inquiry was criticized for, among other things, the narrow scope of its mandate, which focused only on the police response over a particular time period in a particular location, and for the absence of a specific focus on aboriginal women, despite their disproportionate representation among missing and murdered women in British Columbia. An additional concern was that the Native Women's Association of Canada 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 with publicly funded counsel. The basis of the refusal by the Attorney General was that funding outside of the legal aid programme was only provided by the Government when charter rights were engaged. In a letter to the Attorney General, the commissioner of the Missing Women Commission of Inquiry stated that the decision of the Attorney General to refuse funding to representatives of non-governmental organizations and the Downtown Eastside community, who had been given standing at the inquiry, was discriminatory and the height of unfairness, and that the participation of the affected groups was necessary in order to fulfil the mandate of the inquiry.

103. The designated members took note of an increasing number of reports issued by independent bodies, university researchers and civil society organizations that provided recommendations to the State party on how better to address the issue of

missing and murdered aboriginal women. Included among the reports, by order of date of issuance, are:

- The Highway of Tears symposium recommendations report (2006), issued by members of civil society following a symposium attended by aboriginal community organizations and members of civil society
- The Native Women's Association of Canada report "What their stories tell us: research findings from the Sisters In Spirit initiative" (2010)
- The report by university researchers for the Ministry of Citizens' Services of British Columbia entitled "Stopping violence against aboriginal women: a summary of root causes, vulnerabilities and recommendations from key literature" (2011)
- The Human Rights Watch report *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (2013).

104. Representatives of civil society who met the designated members during the country visit reported that the State party had failed to implement a large number of the recommendations and was only at the stage of assessing other recommendations. In its questions to the State party after the country visit, the Committee asked for information on the status of implementation of different recommendations in reports that had been referred to often by the State party, namely the Highway of Tears symposium recommendations report and the reports of the missing women working group.

105. With regard to the Highway of Tears symposium recommendations report, the State party indicated that before proceeding further on the implementation of specific recommendations of the symposium, there was a need to review them to ensure they were still relevant and reflected the current situation.

106. The Committee is also concerned at another risk that economically disadvantaged aboriginal women face and that increases their risk of exposure to violence. Hitchhiking is a common practice associated with poverty, and studies show that its practice increases the risk to aboriginal women of abduction and murder. A major focus of the symposium was on the risks to aboriginal women of hitchhiking, particularly along Highway 16. Several of the recommendations in the Highway of Tears report addressed the issue of safe transportation. In its submission in January 2014, the State party informed the Committee that, in 2013, seven years after the symposium, the Ministry of Transportation and Infrastructure of British Columbia assessed the transport options available for communities in remote areas, including those along the Highway 16 corridor, and was planning to carry out targeted consultations to identify and promote safe transport options. During a visit to the city of Prince George, the designated members were informed that the suggestion of a "free ride" bus journey programme had not been implemented, and that the daily bus service along the 724-kilometre Highway 16 between Prince George and Prince Rupert had been reduced to one trip per week. Ironically, the national police was at the same time sponsoring a "thumbs down for hitchhiking" campaign. The Committee can only conclude that in certain respects the situation has not improved, but rather has deteriorated because the recommendations intended to offer protection to aboriginal women and girls have not been implemented.

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

108. The Committee notes that in response to a question after the country visit, the State party indicated that the federal, provincial and territorial ministers responsible for justice had approved, on 14 November 2013, the release of a report that provided a summary of the actions taken to implement the 52 recommendations of the 2012 report of the missing women working group. The report approved by the ministers provides information in relation to only 4 of the 52 recommendations and provides examples of some of the actions taken in different provinces. The Committee, however, remains concerned that even implementation of the selected recommendations seems insufficiently coordinated and is constrained by provincial autonomy, which means that implementation is dependent on provincial interest and political will rather than being mandatory.

109. With British Columbia reportedly undergoing a justice reform process, progress has been very limited in terms of specific measures to enhance the responsiveness of the justice system to cases of missing persons, and no detailed government action is outlined in *Safety and Security of Vulnerable Women in B.C.: A Status Report in Response to* Forsaken — The Report of the Missing Women Commission of Inquiry. The Chair of the Advisory Committee on the Safety and Security of Vulnerable Women, Steven Point, who was appointed to follow implementation and was supported by the aboriginal community, resigned in May 2013 and has not yet been replaced. A lack of consultation and cooperation has also been reported between the Ministry of Aboriginal Relations and Reconciliation and the Minister's Advisory Council on Aboriginal Women. The State party reported, however, that steps had been taken since 2013 to improve the relationship between the two parties.

110. Given the Committee's observations on the status of implementation of the myriad evidence-based solutions highlighted in the various government 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 and integrated plan of action, outcomes will be piecemeal and fragmentary at best. Furthermore, based on the fact that reports are provided on so few of the recommendations, the Committee can only assume that the concern expressed by a number of stakeholders at the inertia displayed by the authorities in relation to implementation of critical recommendations from various studies, symposiums and inquiries is justified.

2. Prevention of violence

(a) Addressing the socioeconomic conditions of aboriginal women

111. Data on the socioeconomic conditions of aboriginal women and girls extracted from the Statistics Canada 2006 census confirm that, in terms of socioeconomic

indicators, discrimination against aboriginal women persists. The following figures are of significance:

(a) 37 per cent of First Nations females (off-reserve) and 23 per cent of Métis and Inuit females lived in poverty, which was double the rate for non-aboriginal women;

(b) 18 per cent of aboriginal women over 15 years of age were single parents, compared with 8 per cent of non-aboriginal women, and had larger families;

(c) 44 per cent of women and girls living on reserves lived in homes that needed repair;

(d) 31 per cent of Inuit women and girls lived in crowded houses, compared with 3 per cent of non-aboriginal females;

(e) 35 per cent of aboriginal women over 25 years of age had not graduated from high school;

(f) Only 9 per cent of aboriginal women over 25 years of age had a university degree, compared with 20 per cent of non-aboriginal women;

(g) 13.5 per cent of aboriginal women were unemployed, compared with 6.4 per cent of non-aboriginal women;

(h) The poverty rate for aboriginal children was 40 per cent, twice the overall rate for children in Canada;

(i) Aboriginal children were 10 times more likely to be in State care than non-aboriginal children, a higher rate than during the time of residential schools;

(j) Aboriginal women and girls are disproportionately criminalized and incarcerated: aboriginal people make up 3.8 per cent of the total population, but 34 per cent of incarcerated women are aboriginal, and over the past 10 years the number of aboriginal women serving federal sentences has increased by 86 per cent, compared with a 27 per cent increase for men over the same period.

112. The Committee notes that the socioeconomic marginalization of aboriginal women is reflected in the high incidence of poverty among them. Marginalization and poverty are linked to inadequate housing and homelessness, lack of education and employment opportunities, transient lifestyles and migration, drug and substance abuse and overrepresentation of aboriginal children in the child welfare system. The Committee considers that, in the social, economic and geographical context of the State party, disadvantaged socioeconomic conditions and the lack of social services increase women's vulnerability to violence, since the lack of access to such resources reduces the choices available to women in situations of risk and prevents them from escaping violence.

113. The Committee is particularly concerned at the continuing discrimination, originally evident during the time of the residential school system and now perpetuated in child welfare practices, in which aboriginal children are removed from their families and often placed in the care of non-aboriginal foster families. The designated members were informed that, in British Columbia, aboriginal women were at greater risk than non-aboriginal women of having their children taken from them under child protection legislation because of the interpretation of

neglect made by the authorities. This is in spite of the existence of guiding principles in 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 members were informed that women 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. They were also informed by civil society organizations that three times more First Nations children are currently in child welfare care than when the number of residential schools was at its highest.

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 the removal of children negatively affects welfare benefits for the parents and makes it difficult for them to regain economic independence and be in a position to reclaim their children. The response indicates that provincial and territorial authorities have the legislative mandate for all children in care in their jurisdiction and therefore that variations exist in the interpretation and definition of "neglect". Relevant information was provided for each jurisdiction.

115. With regard to the question of poverty among women and its relationship with the removal of children from the family home, the Committee was informed that in Yukon, in cases in which a family is in receipt of income assistance and a child is removed from the parental home on a short-term basis (less than two years), there is a material or tangible impact on the level of benefits received. It was explained that some provincial income assistance authorities determine whether a plan is in place for the child to return home within a specified time frame. If a plan is in place, the authorities can exercise discretion in deferring or annulling the need to reduce family benefits. This allows the family to maintain the child's primary place of residence and prevents the family from experiencing financial shocks. Based on the above information, the Committee draws two inferences: when removal of a child is on a short-term basis, continuation of benefits is not guaranteed; and when removal of a child is on a medium- or long-term basis, there are always tangible impacts on the level of benefits. These views were confirmed by information received during the country visit. In view of the above, the Committee considers that the reluctance of aboriginal women to seek help from the authorities when they are victims of violence is due partly 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 acknowledgement of the State party that violence against aboriginal women and girls is linked to socioeconomic disadvantage. It takes note of the various measures taken by the State party to improve the socioeconomic status of the aboriginal community, in particular in the fields of education, support to families and children, health, safety and housing.

117. The various initiatives notwithstanding, both government and independent sources indicate that the measures have not gone far enough to eliminate the socioeconomic disadvantage of aboriginal people. In a briefing paper prepared in 2013 by the Ministry of Aboriginal Relations and Reconciliation of British Columbia for the Committee, it was acknowledged that the existing education, employment and income gap between aboriginal and non-aboriginal Canadians went some way to explaining the high levels of domestic abuse experienced by aboriginal

women and girls and that poverty was an overarching factor that forced women into homelessness and increased their vulnerability to violence.

118. Information provided by the State party suggests that the disparities are compounded by the decentralized structure of government in which provincial and territorial governments have authority and control over their respective jurisdictions in many respects, such as in the case of children in care. The Committee nonetheless notes that it is stated that the federal Government works closely with the provincial and territorial governments to address the economic security of aboriginal families. This assurance, however, is negated by the fact that when more specific information is provided, 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 that specific population. Instead, reference is made to the creation of 4,500 shelter beds, the placement of 38,000 people in more stable housing and assistance to 10,800 people in pursuing education and training opportunities and to more than 7,000 people in finding part-time jobs and 7,500 in finding full-time jobs.

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

(b) Addressing vulnerability to prostitution and trafficking

120. The Committee notes that legal provisions are in place 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 increases their vulnerability to violence.

121. The Committee notes that the Government of the State party is currently reviewing a decision by the Supreme Court of Canada that declared invalid section 213 of the Criminal Code of Canada, which prohibited communicating in a public place for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute. The section was judged inconsistent with section 7 of the Canadian Charter of Rights and Freedoms due to its negative impact on the safety of prostitutes. The Committee further notes that the Supreme Court suspended the declaration of invalidity for 12 months to give Parliament the opportunity to review the situation and enact new provisions if seen as necessary. The Committee considers this a significant step in the right direction and expects that the review of the decision will result in the exploration of options to ensure that criminal law continues to address the harms experienced by those engaged in prostitution.

122. Although the Committee notes the measures taken by the State party to address issues related to women engaged in prostitution generally, as outlined in the responses to questions after the country visit, it 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 failure of the State party to alleviate poverty among aboriginal women and to address and remedy the disadvantaged socioeconomic status of aboriginal women significantly

contributes to the perpetuation of 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 the federal and the provincial level. 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 the issue.

124. In particular, the Committee notes that the State party's National Action Plan to Combat Human Trafficking is limited to preventive measures in relation to aboriginal women. Although it is envisaged that the action plan will refer to gathering information on the causes of trafficking of aboriginal women and youth, it does not contain a provision either for specific measures for protection and assistance for aboriginal victims, or for the detection, investigation and prosecution of offenders. For example, in the action items chart in annex C to the Action Plan, female immigrants between 15 and 21 years of age are specifically highlighted as vulnerable to human trafficking, but aboriginal women are not mentioned as a specific at-risk group. Persistent flaws in the identification of victims of human trafficking among aboriginal women and girls 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 the trafficking of aboriginal women are too narrow in scope and only focus on aspects related to the trafficking of individuals by family members, and thereby unjustifiably omit 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, representatives of the State party repeatedly stated that, except for in one instance, there was no link between trafficking and the disappearance and murder of aboriginal women, that the national police found no evidence of aboriginal women being trafficked on ships, and that no studies had been conducted to explore possible links between those issues because no formal complaints had been made. However, during the country visit, information was brought to the attention of the designated members by First Nations Chiefs, civil society organizations, aboriginal advocacy groups, university researchers and Members of Parliament regarding the disappearances of aboriginal women who had been trafficked, mainly for the purpose 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 not been sufficiently researched or 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 effective policies and an effective response by the police.

3. The root causes of discrimination

128. Several studies and reports made available to the Committee by the State party and civil society organizations underline that the internalization of patriarchal colonial structures has resulted in circumstances in which 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 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 significance of the work of the Truth and Reconciliation Commission of Canada. However, the Committee considers that the legacy of colonization, the development of post-colonial policies that 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 the continued and increased vulnerability of aboriginal women to such violence.

130. It was very evident to the Committee that the lasting consequences of the sexual and racial discrimination against the aboriginal community during the colonial and post-colonial periods has been a significant contributory factor to the disproportionately high levels of violence by both State and non-State actors on aboriginal women, and the way in which such violence has been, for the most part, treated with impunity. This is confirmed by the following statement made in October 2013 by the Assembly of Manitoba Chiefs in its written submission to a 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 the historical root causes have resulted in deep trauma and high levels of distrust among the aboriginal community towards the authorities and, consequently, in tense and challenging relationships. Although the Committee acknowledges that it will take time to heal these historical wounds, it notes that the nature of contemporary relationships resulting from the colonial and post-colonial context continues to delay progress considerably in addressing the situation of violence, despite the efforts of the State party in that regard.

4. Issues regarding law enforcement

(a) Police response

132. In *Forsaken: The Report of the Missing Women Commission of Inquiry*, seven critical police failures were identified in relation to the handling of cases: poor report-taking and follow-up of reports on missing women; faulty risk analysis and risk assessment; the lack of an adequate proactive strategy to prevent further harm to women in the Downtown Eastside of Vancouver; 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 members were informed that investigations of missing persons and unidentified remains by the national police are currently guided by policies and a document on best practices. The directives address, among other things, report intake, jurisdiction, risk assessment and response, investigative steps and priorities, special procedures for vulnerable and aboriginal missing persons, structured links with other police agencies, including a coroner liaison, sex worker coordinator and 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. The E-PANA, KARE and Devote projects have formed an efficient approach to the policing of such cases.

135. The existence of task forces and guidelines notwithstanding, it was evident during interviews with government officials, aboriginal organizations and authorities, independent bodies and family members in the provinces and territories visited that many of the failures identified in *Forsaken: The Report of the Missing Women Commission of 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 the families of victims, by non-governmental organizations providing victim services and by academics confirmed the failures but were diametrically opposed to the accounts provided by government officials and police officers, who claimed that in responding to victims of violence and/or their families, they adhered to the guidelines and best practices.

136. Based on information received from representatives of the national police, failure to abide by national and local best practices and/or 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 is therefore concerned that the practical usefulness and impact of the best practices is limited because implementation is voluntary, sanctions only apply in extreme situations and no oversight mechanism exists to ensure implementation.

137. Notwithstanding the fact that the national police best practices state that at the start of an investigation police agencies should not treat certain types of missing persons differently, such as repeat runaways or persons with high-risk lifestyles, the designated members were informed of poor report-taking by some police officers, who at times assumed that aboriginal women who had disappeared were runaways or that the disappearances were due to the fact that the women engaged in so-called high-risk lifestyles.

(b) Distrust of police by aboriginal women

138. Interviews conducted with all stakeholders revealed that aboriginal women were reluctant to report acts of violence to the police, mainly because of police behaviour and bias. Victims also reported that aboriginal women were regularly profiled by the police and were overpoliced, which resulted 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 was still rampant, and was reflected in the use of demeaning or derogatory language towards aboriginal women and in stereotypical portrayals of aboriginal women as prostitutes, transients or runaways and of having high-risk lifestyles. They further indicated that their decision on whether or not to report an incident continued to be affected by the anticipated police reaction and by doubts as to whether the police would take their complaints seriously.

139. It was reported that, as a result of entrenched stereotyping, calls to the police or visits to a police station by women seeking help regarding violence were frequently met with scepticism and victim-blaming questions and comments. One aboriginal woman who was interviewed claimed that when she attended a police detachment to report having been 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 members were told that many members of the aboriginal community did not rely on or trust the police to investigate cases involving aboriginal women effectively. Aboriginal women engaged in prostitution and those living on reserves indicated that they did not believe that the police could provide them with the protection they required.

140. This type of institutionalized stereotyping is also embedded in the risk assessment practices carried out in a number of provinces, in which assessments are based on stereotypes when reports of a missing person are submitted, which may lead to erroneous assumptions. In Prince George, for example, if "the person is involved in the sex trade, hitchhiking, gambling and/or a 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 the above profile, the response may be less than immediate. The Committee is concerned at 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 document on best practices states that a police agency should not turn away a report of a missing person on the basis of time elapsed since the person has gone missing, the prevalent view among the family members interviewed was that a waiting period of between 24 and 48 hours must lapse before the police could accept a report on a missing person. In fact, in the 2010 and 2012 reports of the missing women working group it was acknowledged that insufficient information had been given to aboriginal communities on practices for reporting missing persons. In British Columbia, the Missing Women Commission of Inquiry recommended the establishment of a provincial telephone line for reporting cases of missing and murdered women in order to quicken the reporting process.

142. The main issue that emerged was a continuing distrust of the police by aboriginal women and their families and a real sense of profound fear of police retaliation if they complained about or reported violence. Family members and civil society organizations therefore informed the designated members of barriers to reporting a missing person, which were 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 on how to submit a report.

143. Families of murdered aboriginal women also reported a failure by the police to treat cases of missing aboriginal women in an urgent manner and to carry out adequate investigations. They also reported 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 at the limited efficiency of police protocols in investigating cases of missing and murdered aboriginal women (such as the national police best practices) due to their non-binding nature and the lack of oversight and enforcement mechanisms. The Committee is also concerned that the protocols were not developed in sufficient consultation with the aboriginal community. The Committee notes that during interviews with national police representatives and police officers, many responses given to the designated members pointed to a lack of awareness of the persisting barriers faced by aboriginal women seeking access to 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 national police officers do not receive adequate training on cultural sensitivity to respond effectively and competently to violence against aboriginal women and girls. During the country visit, national police officials stressed that training happens on the job, given that officers are detached to a given community for a period of two years. Regarding the actual provision of training workshops for police officers on cultural sensitivity, even if attendance rates are reported to be high, the courses are optional and most are online. Online courses have a limited impact compared with in-class courses and are not systematic throughout a police officer's career. Effective training is necessary in order to ensure that acts of racism and sexism are barred from day-to-day policing, especially with regard to officers detached to 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 the ability of such agencies to respond effectively 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 prevailing culture of distrust of the police. It also notes that the low number of women and aboriginal representatives within the national police inhibits progress in building such trust, and that there is little interest on their part to join the national police 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 overrepresentation 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 offers insufficient protection to aboriginal women, as a disadvantaged group and a minority population affected by high rates of violence.

(c) Fragmented inter-jurisdictional communication

148. In spite of the ongoing efforts to develop police standards for national police detachments in all provinces, the Committee notes that cross-jurisdictional issues continue seriously to impede the reporting of cases of missing or murdered aboriginal women and the effective sharing of information across police jurisdictions.

149. While the national police provides services to a large number of aboriginal communities, around 200 other law enforcement agencies provide municipal and provincial policing services across Canada.[10] Representatives of aboriginal women's organizations have denounced the absence of operating procedures for sharing information and investigating across jurisdictions 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 after the country visit, the State party indicated that a recent enhancement to the policy of the national police on missing persons directed that a missing person complaint would be accepted and acted upon by any detachment, regardless of jurisdiction. The designated members were informed during interviews with members of civil society in a particular territory that in spite of the injunction, police refused to receive missing person reports when family members reported outside their community of residence or outside the jurisdiction in which the person went missing. This finding illustrates that no national missing persons strategy exists that could provide a foundation for a standardized organizational approach to an investigation into a missing person.

(d) Absence of an independent police complaints mechanism

151. The Human Rights Watch report, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, of February 2013 catalogues the history of sexual, physical and verbal abuse against aboriginal women and girls by the criminal justice system (that is, the police, lawyers and judges), which has left behind a legacy of fear and mistrust of law enforcement agencies and officials. To borrow from *Forsaken: The Report of the Missing Women Commission of Inquiry*, those who are brave enough to come forward to make complaints, especially aboriginal women and girls, are treated like "nobodies" by officials, a claim that was strongly refuted by the Vancouver Police Department and the national police. It was even alleged that upon the release of the Human Rights Watch report, the commissioner of the national police, in an e-mail to 29,000 members, noted the reports of sexual harassment and criminal violence by the force and told the members: "My message to you today is — don't be worried about it, I've got your back". The allegation 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, national police employees, parliamentary committees, the Commission for Public Complaints Against the Royal Canadian Mounted Police

[10] The national police covers 70 per cent of the territory of the State party.

and several major reports, all of which called for a more effective review of the national police and a more timely handling of issues related to the conduct of police officers, the State party in Bill C-42 enacted legislative amendments to the Royal Canadian Mounted Police Act, which received royal assent in Parliament in June 2013. The Bill provided for the creation of a new Civilian Review and Complaints Commission for the Royal Canadian Mounted Police to replace the existing Commission for Public Complaints Against the Royal Canadian Mounted Police, and provided the new Commission with enhanced powers.

153. The Committee is concerned that, although the new law grants the Civilian Review and Complaints Commission certain expanded investigative powers, functional issues, such as limitations on third-party complaints, self-initiated review powers and the non-binding nature of recommendations, may undermine the efficiency of the Commission and strain public confidence. Furthermore, the Act as amended still does not remove the obligation to report to the Minister of Public Safety, thereby calling into question the true autonomy and authority of the Commission.

154. The Committee further notes that the list of the 10 most common complaints issued against police over the past few years, submitted by the State party in January 2014, did not include sexual abuse, which conceivably could be lower on the list of complaints. When asked by the Committee whether the Civilian Review and Complaints Commission was mandated to investigate incidents of sexual harassment, the State party's response was limited to references to workplace harassment within the national police but not to sexual harassment directed against the public and, in particular, against aboriginal women, who make up the burden of the present inquiry. The Committee also notes that the mandate of the Independent Investigations Office of British Columbia 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 relating to policing in northern British Columbia outlined in the Human Rights Watch report, the Commission for Public Complaints Against the Royal Canadian Mounted Police launched a public-interest investigation into the allegations. On the other hand, information included in the June 2013 submission from the Native Women's Association of Canada indicated that the Prime Minister stated in Parliament that anyone aware of serious allegations involving criminal activity should give the information to the appropriate police force, and referred the matter to the Commission for Public Complaints. The Committee notes that the Commission for Public Complaints has been replaced by the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police and, although no information has yet 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 to account and in specific recommendations to protect aboriginal women and girls from further victimization by the State.

156. During interviews, concerns surfaced about the extent to which the Civilian Review and Complaints Commission would function more effectively as an independent civilian body to investigate cases of police misconduct. Responses by the State party to questions raised in that regard after the country visit indicate that in cases in which a provincial or federal regime for independent external

investigation has not been established or in which it is not feasible or appropriate for the national police to identify an external law enforcement agency or other duly-authorized investigative agency to conduct an investigation, a division of the national police other than the one with which the incident occurred will conduct the investigation. The Committee is therefore concerned that, as with the Commission for Public Complaints, an investigation into a complaint against the national police may be carried out by the national police itself.

157. Concerns about the effectiveness and independence of mechanisms to address complaints against the police emerged very clearly during discussions with various stakeholders. The designated members heard testimonies that incidents involving police officers were not taken sufficiently seriously when reported. The prevailing distrust among aboriginal women is compounded by reports that the oversight bodies that investigate and punish police misconduct, abuse of authority and any other act contrary to police ethics are not sufficiently independent and effective. There was consensus among a wide range of civil society actors and academics on the necessity to further improve the civilian oversight regime in order that the national police ensures that its actions are subject to stricter public scrutiny. During the country visit, it emerged that aboriginal women experienced difficulties in accessing and understanding the different oversight mechanisms of different police forces.

158. Although the Committee acknowledges that the State party has strengthened the independence of its accountability mechanisms regarding police conduct through the mandatory appointment of third-party observers within the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police, it notes the remaining lack of independence and the limited powers and mandate of the new Commission. That the guarantees of independence are insufficient is reflected by the fact that investigations into the misconduct of national police officers can be carried out by the national police 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 complaints procedures to challenge police conduct are available and easily accessible to aboriginal women and girls. The Committee considers that the police cannot protect aboriginal women effectively without a more robust complaints mechanism as an essential component of ensuring trust.

(e) Deficiencies in data collection

159. Existing data from the Statistics Canada 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 police services, including the national police, do not report information on the aboriginal identity of homicide victims, notwithstanding the survey's requirement to do so. It also stated that the ability of the police to indicate the aboriginal identity of victims conflicted with privacy legislation and different policing policies in various jurisdictions. This was confirmed in the State party's response to the universal periodic review recommendations made to it in 2013, that race-based statistics were not recorded in a systematic manner across the State party's criminal justice system because of operational, methodological, legal and privacy concerns. Another limitation brought to the attention of the designated members during its interviews

with police representatives was that police officers felt uncomfortable asking individuals about their aboriginal identity.

160. The undercount of homicides of aboriginal women is demonstrated by data on female victims of homicide by aboriginal status and by province and territory from 2003 to 2011, submitted by the State party in January 2014. Of the 1,496 victims from that period, only 116 (8 per cent) were recorded as aboriginal females, while 654 (44 per cent) were recorded as non-aboriginal females. The status of 726 (49 per cent) of victims was, however, recorded as unknown/not collected/not reported. As previously indicated, the latter group represented individuals who were reluctant to disclose their status or from whom information on status was not solicited by the police. Whatever the reason, 57 per cent of the victims were not classified as non-aboriginal, partly due to the limitations on the ability of the police to indicate the aboriginal identity of victims. According to civil society organizations, those victims are most likely aboriginal. The data corroborate the observation 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 was informed of the State party's National Centre for Missing Persons and Unidentified Remains, which was established in 2011 and is managed by the national police. The personnel of the National Centre include an aboriginal police officer linked to the National Aboriginal Policing Services of the Royal Canadian Mounted Police in order to ensure a focus on the issue of missing aboriginal persons. It had been envisaged that the National Centre would create the first national database for missing children and persons and unidentified remains, which would be accessible across jurisdictions by the end of 2013, but development of the database is still ongoing. As previously indicated, the Committee is aware that task forces have been established in some provinces and in one territory to investigate outstanding cases of missing and murdered women. The Committee is therefore concerned at whether an adequate interface exists between the National Centre and the projects in the provinces and territory, and at the overall coordination of this vital activity.

162. The Committee further notes that, in May 2011, in an effort to overcome obstacles to capturing accurate data, the Canadian Police Information Centre, which is accessible across all police jurisdictions, added new fields to its database, including fields on aboriginal identity, in order to enable the police to better record such information. The Canadian Police Information Centre is a national information-sharing system that has linked criminal justice and law enforcement partners across the State party and internationally since 1972. Another important database is the Violent Crime Linkage System (ViCLAS), a national computer program that captures information on homicides, sexual assaults, abductions and other violent crimes and collects and compares data to link violent crime investigations and identify serial crimes. All law enforcement agencies in the State party can contribute data to ViCLAS.

163. In February 2013, the National Aboriginal Policing Services of the Royal Canadian Mounted Police led a file review across national police jurisdictions. Each division of the national police conducted a review of cases of missing persons from 1940 to 2013. The national police also conducted a review of the number of murdered aboriginal women from 1932 to 2013, which validated 327 homicides, 98 of which (30 per cent) are still under investigation. The State party noted, however, that 82 per

cent of aboriginal female homicide cases for the period 2006-2012 had been solved, compared with 88 per cent of cases for non-aboriginal women for the same period. The national police indicated in its 2014 report that 60 per cent of homicides of aboriginals involved in the sex trade had been solved. It is to be noted, however, that the State party itself recalled that the police's limited ability to identify victims as aboriginal meant that the figures were neither definitive nor accurate.

164. Statistics Canada documented the inadequacy of official data that identified by race the victims and perpetrators of murders and disappearances of aboriginal women and girls. The State party acknowledges the absence of reliable statistics on the exact number of missing and murdered aboriginal women and girls and the inaccurate identification of victims as aboriginal.

165. The Committee was also informed that Statistics Canada collected data on self-reported victimization through the General Social Survey on Victimization, which captures the number of incidents of violence, regardless of whether the incident was reported to the police. According to the 2009 General Social Survey, the rate of self-reported violent victimization against aboriginal females over 15 years of age was 2.5 times the rate for non-aboriginal females (279 compared with 106 incidents per 1,000 population); the rates included both spousal and non-spousal violence. Aboriginal people reported incidents of sexual assault at a rate of 71 incidents per 1,000 population, compared with 23 per 1,000 population for non-aboriginal people; however, due to small counts, it is not feasible to break down incidents of sexual assault by sex.

166. The Committee notes serious gaps in the manner in which the police records and shares information, which result in an unclear picture of the actual scale of violence against aboriginal women, in particular, cases of missing and murdered aboriginal women. The efforts recently deployed by the State party notwithstanding, 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, that are disaggregated by race and ethnicity and collected 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 State party views access to justice as fundamental to an effective and efficient justice system. It welcomes the information provided on initiatives to increase access to legal aid and justice in various provinces and territories in which, apart from in British Columbia and Ontario, the needs of aboriginal women are not necessarily targeted.

168. Many testimonies of 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 representatives of the national police and police officers, many responses given to the designated members pointed to a lack of awareness of the persisting barriers faced by aboriginal women seeking access to the justice system. This lack of awareness is confirmed by the Committee on the Elimination of Racial Discrimination, which expressed concern that members of the

aboriginal community continued to face obstacles in accessing justice, despite the existence of programmes at the provincial and territorial level to increase access.

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

170. The Committee considers that in the preparation of programmes to combat violence against aboriginal women and during the drafting of legislation, insufficient consultation took place with representatives of aboriginal communities, which resulted in those communities having limited ownership of the measures taken by the State party. In that regard, a particular concern surfaced in relation to the Family Homes on Reserves and Matrimonial Interests or Rights Act, which provides for emergency protection orders that grant temporary exclusive occupation of the family home to aboriginal women who are victims of domestic violence. Representatives of the aboriginal community told the designated members that they were concerned at the lack of adequate consultation during the drafting of the Act.

171. The Committee considers that the disproportionate level and the numerous forms of violence experienced by aboriginal women call for specific policies, measures and programmes in order to ensure that the entire justice system is capable of responding adequately 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 and the perceived racism and discrimination within the institutions of the State party create further barriers for aboriginal women to access justice.

172. Based on the information before it, the Committee considers that the State party has not taken sufficient measures to comprehensively address the challenges faced by aboriginal women in accessing justice and to combat the discrimination against aboriginal women in the justice system. The State party has not given sufficient focus to addressing the underlying causes that prevent aboriginal women from accessing justice on an equal basis to men and non-aboriginal women. Although the Committee notes the recent increased efforts by the State party to address these problems, it 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. Overrepresentation of aboriginal women in the prison population

173. Another clear instance of racial and sexual stereotyping is reflected in the overrepresentation of aboriginal women in the prison population. Information and submissions received have described the strained relationship between aboriginal people and the justice and penitentiary systems. The Supreme Court of Canada has taken judicial notice of the widespread issue of systemic discrimination, which results in the overrepresentation of aboriginal people in the justice system and in prison.

174. The overrepresentation of aboriginal women in the prison population is recognized by the State party, which confirms that incarceration rates for aboriginal

women are disproportionately high (aboriginal women represent only 4 per cent of the total female population, but 34 per cent of women in federal penitentiaries are aboriginal). The Canadian Human Rights Commission denounced the fact that aboriginal women 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, with such a classification undermining their access to rehabilitation programmes 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 members points to a significant variation in the services provided to victims in the different provinces and thus a lack of uniform national standards, notwithstanding the Canadian Statement of Basic Principles of Justice for Victims of Crime, which was endorsed by the federal, provincial and territorial ministers responsible for justice in 1988 and reiterated in 2003. The information also indicates a lack of coordination between the various agencies from which women may seek help; an insufficient level of referral by the police to existing victim or community services; the limited availability of appropriate legal assistance in many communities; the inadequacy of services to support the specific needs of aboriginal women, including trauma support; insufficient awareness among aboriginal communities about the full range of protective measures; and the limited participation of members of the aboriginal community in criminal proceedings against them.

176. The Ministry of Aboriginal Affairs and Northern Development has provided operational funding for 41 shelters in First Nations communities as part of its family violence prevention programme. In 2009, however, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, noted the lack of adequate shelters for aboriginal women victims of violence in the report of his mission to Canada in 2007 (A/HRC/10/7/Add.3). Civil society organizations have emphasized the absence of emergency shelters or transitional homes for women in the majority of the 2,500 reserves in the territory of the State party, such as in the reserve of the Long Point First Nation community in Quebec, where women must travel 100 kilometres to the nearest shelter. Civil society organizations also highlighted the gravity of the situation in northern and rural communities where aboriginal women and girls are situated far away from the urban centres in which the above-mentioned services are concentrated. In Yukon, the designated members were informed about the absence of programmes targeted at preventing violence against aboriginal women and of State-run shelters. All shelters are currently run by non-governmental organizations.

177. The call in June 2013 by the Federal Ombudsman for Victims of Crime for a victims' bill of rights reflected the need for consistent and enforceable rights nationwide and minimum standards for all victims. The lack of consistency in services, programmes and compensation for victims across provinces and territories was considered by the Federal Ombudsman as particularly problematic when the crime occurred in a province or territory other than that in which the victim resided. The Federal Ombudsman also stressed that access to restitution and enforcement of

restitution orders was limited. It is currently estimated that victims in the State party bear 83 per cent of the total costs arising from the consequences of the crimes against them. 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 in accessing victim services are even greater for families that have missing or murdered relatives. Family members mentioned that their assistance needs were not met, in particular because they did not receive sufficient information about their rights and their role in the process, and because of difficulty in accessing information about the range of available services. Some family members also indicated that the police did not communicate with them during the investigation, an assertion confirmed by civil society organizations. The Committee is also concerned at the disparities between provinces and territories regarding services available to victims and the lack of consistent standards nationwide, including with regard to legal aid, which compound the 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, in British Columbia in particular, for women belonging to disadvantaged groups, including aboriginal women. The issue of legal aid vanishing because of deep budget cuts in recent years was regularly highlighted during the inquiry. At the same time, the demand for legal services among aboriginal women is overwhelming, notably in the areas of family and property law in order to enable them to escape from violent relationships.

8. Efforts at compensation and reparation

180. The families of victims may claim restitution from the offender when bringing their case to court. However, the Federal Ombudsman reported that restitution is underutilized and poorly enforced in the State party and that the costs for victims constitute a barrier to access.

181. The designated members heard the testimonies of family members who had received compensation, including that of 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 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, and a personal apology. The absence of this type of reparation in the State party was raised by many family members in meetings with the designated members.

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

1. Addressing discrimination — the call for a national inquiry

182. The designated members interviewed several aboriginal community organizations and representatives who indicated that, given the limitations of the Missing Women Commission of Inquiry, the federal Government had been strongly called to convene a national public inquiry into missing and murdered aboriginal women and girls, and to consult with the provincial and territorial governments and national aboriginal organizations on the terms of reference for such an inquiry.

During the country visit, the designated members were informed that the premiers (prime ministers) of each province and territory, the Federal Ombudsman for Victims of Crime, the Canadian Human Rights Commission and national and international non-governmental organizations also supported the call for a national inquiry.

183. Civil society organizations drew attention to the existence of a tradition in the State party of appointing public commissions of inquiry whenever an issue of government or public institutional failure arises, in order to ensure the transparent and independent collection of evidence and assessment of the causes of the failure; to openly and publicly determine the best ways to prevent recurrence; and to strengthen the confidence of the public and of affected parties. Representatives of civil society organizations added that, in the light of the long-standing distrust between the aboriginal community and 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. Representatives of civil society informed the designated members 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 reconciling the aboriginal community and the authorities.

184. The Special Committee on Violence against Indigenous Women, established by Parliament in 2013 to conduct a study on the high rates of missing and murdered aboriginal women in the State party, was based on a motion by the Liberal Party critic for aboriginal affairs, Carolyn Bennett. She contended that the Government had a responsibility to provide justice for the victims and healing for their families, and to work with partners to put an end to the violence. She also contended that a special committee should be appointed with the mandate to conduct hearings on the critical matter of missing and murdered aboriginal women and girls in Canada and to propose solutions to the root causes of violence against aboriginal women across the country. The motion was supported by the New Democratic Party and the governing Conservative Party and was passed unanimously on 27 February 2013. The Special Committee conducted meetings and interviews between March and June 2013. In March 2014, the Special Committee issued the report *Invisible Women: A call to Action — A Report on Missing and Murdered Indigenous Women in Canada.*

185. Stakeholders interviewed by the designated members were concerned that the independence of and transparency within the Special Committee and the lack of consultation between the Special Committee and aboriginal representatives had been seriously questioned by civil society organizations and Members of Parliament, which had emphatically stated that the Special Committee could not be considered a substitute for a national public inquiry.

186. The Committee considers that the meetings and interviews undertaken by the Special Committee on Violence against Indigenous Women cannot be considered 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 and territories and representatives of independent bodies, the aboriginal community and national and international non-governmental organizations creates a major obstacle to resolving the issue of missing and

murdered aboriginal women and to 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 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 inadequate content and scope of existing programmes.

188. Despite numerous calls from civil society organizations, representatives of the aboriginal community and the Federal Ombudsman for Victims of Crime 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 the matter in a strategic, coordinated and collaborative manner. Senior officials, however, informed the designated members that no specific coordination mechanism or agency existed and that the devising of measures to address violence against aboriginal women was the responsibility of the Department of Justice.

189. In response to questions after the country visit, the Committee was informed that, in January 2012, the federal, provincial and territorial ministers responsible for justice and public safety agreed on a common approach to address violence against aboriginal women and girls. Led by the province of British Columbia, ministers directed senior justice officials to develop a justice framework to help to guide individual and collective action. The framework will encourage the authorities in different jurisdictions to harmonize and coordinate their activities where appropriate. It will also be flexible enough for the authorities in each jurisdiction to work with 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 following year. Officials would revise the draft framework based on feedback from the dialogue, and would report back to ministers after one year on the development and implementation of the federal, provincial and territorial justice framework to address violence against aboriginal women and girls.

190. The Committee is concerned that, although the State party is focusing on improving the response of the justice system and therefore on improving investigations and the prosecution and punishment of perpetrators, it fails to specifically address the issue of missing and murdered aboriginal women by properly taking into account the socioeconomic root causes and the link with the wider issue of violence against aboriginal women. Throughout the inquiry it was acknowledged that several cultural, socioeconomic and political factors framed and fuelled the problem, and it was recognized that little would change until an integrated and intersectoral approach to address the problem was designed.

191. The Committee also considers that the State party has failed to deal with violence against aboriginal women as a serious and large-scale problem requiring a comprehensive and coordinated response. The State party has also failed to address the issue as a problem of socioeconomic discrimination against aboriginal women

and of intergenerational trauma resulting from collective emotional and psychological wounding during colonization.

192. During interviews with the designated members, senior officials in relevant ministries indicated that the development of a national action plan to improve the socioeconomic conditions of the aboriginal community was not needed, as the Government was taking sufficient measures in that regard and the Ministry of Aboriginal Affairs and Northern Development had taken the lead in implementing such measures. Representatives of an independent advisory body and of civil society, however, consistently informed the designated members that, in their view, the federal Government had no strategic view on the objectives to be reached and on the use of available funds.

193. The State party maintains its opinion and reiterated on 14 January 2014 in its response to questions after the country visit that although an action plan at the national level might appear desirable to some and there were clear benefits to coordination among services, it was also evident that community-based, locally-driven responses that reflected the circumstances, needs and priorities of those most affected by violence against aboriginal women were key instruments in resolving the issue. The Committee, however, is not convinced by the arguments put forward by the State party and is of the opinion that both approaches to the problem are absolutely necessary. Action on the ground must be informed by a coordinated plan based on a consultative process that involves all stakeholders, including the rights holders, and must take into account all dimensions of the problem and the cultural, ideological, socioeconomic, judicial and political structural barriers that are the root cause.

IX. Legal findings

A. Human rights obligations of decentralized systems

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

195. The Committee stresses that, even 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 its organs, including provincial and territorial governments, to which powers have been delegated. In this respect, the Committee recalls its general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, in which it clearly sets out States parties' obligations in the context of decentralization and devolution of powers. The general recommendation 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.

B. State's obligation under the Convention

196. The Committee recalls that, under articles 2 (c) and 2 (e) of the Convention, States parties are obliged to take appropriate and effective measures to overcome all forms of sex and gender-based discrimination that fosters violence against women, whether by public or private actors. In that regard, the Committee notes that, in line with general recommendations No. 19, on violence against women, and No. 28, and its consistent jurisprudence,[11] States parties may be responsible for private acts if 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 private acts 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 in which particular women and girls are at known risk, the State party has "an obligation to set up effective and appropriate protective mechanisms to prevent further harm from occurring" (E/CN.4/2006/61, para. 82). The Special Rapporteur also considered 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 (A/HRC/23/49, para. 73). 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 paragraph 10 of general recommendation No. 28, States parties have an obligation "not to cause discrimination against women through acts or omissions". The Committee refers to paragraph 6 of general recommendation No. 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.[12] General recommendations Nos. 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. 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 refrain from engaging in any act or practice of discrimination

[11] See communications No. 18/2008, *Vertido v. Philippines*, views adopted on 16 July 2010, para. 8.4; No. 20/2008, *V.K. v. Bulgaria*, views adopted on 25 July 2011, para. 9.3; No. 31/2011, *S.V.P. v. Bulgaria*, views adopted on 12 October 2012, para. 9.3; No. 32/2011, *Jallow v. Bulgaria*, views adopted on 23 July 2012, para. 8.4.

[12] See also general recommendation No. 19, para. 6: "Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."

against women. The State party's undertakings under article 2 (d) are obligations of result. Both articles 2 (c) and 2 (e) entail obligations in relation to effective protection through remedies that are practically available and accessible to women who wish to assert their rights before the relevant courts or other institutions. States parties are therefore required to adopt measures to ensure the practical realization of the elimination of discrimination against women, including measures that enable women to complain effectively about violations of their rights under the Convention and to obtain an effective remedy.[13] 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" (A/HRC/23/49, paras. 16 and 72).

199. The Committee observes that article 15 of the Convention embodies the principle of equality before the law, and that under the article, the Convention seeks to protect women's status before the law, be it as a claimant, a witness or a victim,[14] and encompasses all executive or judicial decision-making bodies, including civil, criminal and administrative courts and tribunals. The duty of the State party to protect women from violations of their human rights by both State and non-State actors includes the duty to protect women from 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 those of sexual violence.[15] 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 articles 10, 11 and 12 in order to create equal opportunities for women to exercise the rights in article 15. In that 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 women in rural areas and take all appropriate measures to ensure the application of the provisions of the Convention to women in rural areas.

200. The Committee recalls that the Convention recognizes 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.[16] 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".[17] The Committee underlines that intersectional discrimination increases the risk of violence and heightens the adverse consequences of violence when it occurs, and that States parties have special obligations to ensure that aboriginal people are entitled without discrimination to enjoy all human rights, as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.

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[13] See communication No. 19/2008, *Kell v. Canada*, views adopted on 28 February 2012, para. 10.3.

[14] See *S.V.P. v. Bulgaria* (note 11 above), para. 9.11.

[15] See *S.V.P. v. Bulgaria* (note 11 above), para. 9.11, and general recommendation No. 19, para. 24 (i).

[16] See *Kell v. Canada* (note 13 above), para. 10.2.

[17] See *Kell v. Canada* (note 13 above), para. 10.3.

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 under article 8 of the Optional Protocol, covers the extreme form of violence in cases of missing and murdered aboriginal women. The Committee recalls paragraph 7 of general recommendation No. 19, which indicates 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:
>
> (a) The right to life;
>
> (b) 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 of such violence may be traced back to colonial and post-colonial policies and practices and to the long-lasting socioeconomic marginalization of aboriginal peoples, which has not been sufficiently addressed.[18]

202. The main issue upon which the Committee has to decide in this case is whether the State party has fulfilled its direct obligations under the Convention in relation to victimization of aboriginal women by legislators, administrators, law enforcement officials or other public actors or authorities. Furthermore, the Committee needs to establish whether the State party has fulfilled its due diligence obligation to prevent, protect from, investigate and punish gender-based violence and provide reparations to victims of gender-based violence and victims that have disappeared or have been murdered by private non-State actors. The basic yardstick is not only whether the same standards and procedures have been applied to cases of violent crimes against aboriginal women as have been applied to crimes against other groups within the population of the State party, but also, in the light of the findings of fact section above, whether the State party has systematically strengthened its institutional response to be 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.

203. With regard to fulfilment by the State party of its obligations under articles 3, 5 (a) and 14 (1) of the Convention, the Committee considers that the realization by aboriginal women of their economic, social, political and cultural rights is necessary in order to enable them to escape violence.[19] The Committee finds that the failure of the State party to provide such conditions, including education, housing and

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[18] See, for example, CEDAW/C/AUL/CO/7, para. 41.

[19] See communication No. 2/2003, *A.T. v. Hungary*, views adopted on 26 January 2005, in which the Committee found that the State had an obligation to ensure that adequate housing was available to permit women to escape violence. See also *Kell v. Canada* (note 13 above), in which the Committee found a close connection between being able to escape violence and having adequate legal aid to assist with property and housing issues.

transportation options and support to families and children, places aboriginal women at increased vulnerability, making it more difficult for them to achieve protection against and redress for different forms of violence. In that regard, the Committee recalls that the overrepresentation of aboriginal women in trafficking, sexual exploitation and prostitution ensuing from their socioeconomic marginalization puts them at a disproportionately high risk of disappearance and murder. The Committee observes that the marginalized status of aboriginal women and girls, which is acknowledged by the State party, has a direct impact on their vulnerability to violence at 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 exposes aboriginal women to gaps in both social and judicial protection, as indicated in the report of the missing women working group in 2010. The Committee considers this to be a violation of article 3 of the Convention, which provides for States parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures 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, gender and aboriginal identity. The Committee considers that the information before it shows that aboriginal women face intersectional discrimination stemming from inextricable factors. In addition, the intersectional discrimination suffered by aboriginal women living on reserves is exacerbated by their living in a rural environment, because of their geographical isolation and limited mobility, the lack of safe transportation and their limited access to law enforcement, protection and counselling services. The Committee considers that intersecting forms of discrimination and their combined negative impact on aboriginal women aggravate violence against aboriginal women. This view is corroborated by findings of the Special Rapporteur on violence against women, its causes and consequences, who took note of the high rate of violence against aboriginal women in the State party and 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 reproduce a multi-level oppression that culminates in violence (A/HRC/20/16). The Committee considers that, although the State party recognizes the general consequences of intersecting forms of discrimination based on gender and race, which lead to the increased vulnerability of aboriginal women, it has failed to take sufficient account of the particular problems of aboriginal women living on reserves, in breach of article 14 (1) of the Convention.

205. The Committee recalls that, under articles 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, practices and 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 face. It considers that gender stereotyping is persistent in the society of, and institutionalized within the administration of, the State party, including within law enforcement agencies. This stereotyping includes portrayals of aboriginal women as prostitutes, transients or runaways and of having

high-risk lifestyles, and an indifferent attitude towards reports of missing aboriginal women. The Committee considers that, notwithstanding the fact that the State party has made an effort to provide gender-sensitive training for the police, the State party 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).

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. Although the Committee notes the progress achieved regarding the management of police operations and adoption of policies and best practices, it is concerned that many shortcomings remain regarding the reporting and investigation of crimes, the provision of shelters and transportation and the lack of trust in relations between the police and aboriginal women based on sexism and racism, which result in impunity, as elaborated in the findings of fact section.

207. The Committee recalls the importance of the receipt of information by victims of violence or their relatives about their rights and about programmes and services available to them in order to enable them to exercise their rights effectively. The Committee also recalls that the manner in which police officers respond, their attitude towards victims, the protection they provide and the way in which they conduct investigations are vital first steps to ensuring the safety of victims and the accountability of offenders (A/HRC/23/49, para. 50). However, as explained in the findings of fact section, 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 towards law enforcement agents, combined with biased attitudes and stereotypes on the part of officials of the State party, have hampered awareness among aboriginal women that they are rights holders, have discouraged aboriginal women against reporting violence and have caused them to stay away from the legal process. The Committee recalls that the State party has a well-established legislative and institutional framework, a functioning judiciary, preventive and protective measures against violence and remedies for women victims of violence. In order to meet the due diligence standard, however, the formal framework established by the State party 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.[20]

208. The Committee observes that, in order for aboriginal women who are 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.[21] 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

[20] See A/HRC/23/49, para. 72, which makes reference 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.

[21] See communication No. 6/2005, *Yildrim v. Austria*, views adopted on 6 August 2007, para. 12.1.2.

needs to be assessed in the light of its extensive and long-standing knowledge of patterns of vulnerability and risk for aboriginal women in its territory. Based on its own reports and the concluding observations of the Committee in 2008, the State party had knowledge of the high levels of violence against aboriginal women and girls, the existence of patterns in the structural inequalities faced by aboriginal women, notably in education, housing, health and employment, the challenges for aboriginal women in accessing justice, and the shortcomings of the justice system. The Committee notes that for a long period of time the State party prejudiced the rights of families of missing and murdered aboriginal women by failing to conduct effective investigations, with a number of cases still unresolved.

209. It is indicated in general recommendation No. 19 that States parties can be held accountable for the conduct of non-State actors, in 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 findings of fact show the shortcomings in the State party's system to eliminate violence against women that prevent it from protecting aboriginal women effectively, from ensuring that offenders are held to account, and for providing redress to aboriginal victims. The Committee notes with serious concern that perpetrators may count on the insufficient response of the police and the justice system and continue to operate in an environment conducive to impunity in which aboriginal women continue to suffer high levels of violence with insufficient criminal liability and without adequate access to justice.

210. In the 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 has failed to take effective measures to apply its legislative framework in practice, to give effect to and implement the many recommendations tabled in plans and programmes, and to ensure that its agents provide effective protection and conduct effective investigations and prosecutions, in particular in relation to missing and murdered aboriginal women. The Committee finds that the failure of the State party to address and remedy the disadvantaged socioeconomic 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 the difficulties for aboriginal women 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 failures. The Committee therefore concludes that the State party has violated its obligations under articles 2 (c) and 2 (e) of the Convention 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 its obligations under articles 2 (c), 2 (d), 2 (e) and 15.

211. Recalling that the provisions mentioned below should be read together with general recommendations Nos. 19 and 28, the Committee is of the view that the

State party has failed to fulfil its obligations under the Convention and has therefore violated the rights of aboriginal women victims of violence, in particular those victims of murders and disappearances and their family members, under articles 1, 2 (c), 2 (d), 2 (e), 2 (f), 3 and 5 (a), read in conjunction with articles 14 (1) and 15 (1).

212. The Committee stresses that the federal structure of the State party does not relieve it of its international obligations. On the contrary, in the context of 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

213. In accordance with article 8 of the Optional Protocol to the Convention and rule 83 of the 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 findings of the Committee 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 severity of the issues of murdered and missing aboriginal women and the gender-based violence against aboriginal women, and recalls that the State party has acknowledged the disproportionate level of violence faced by aboriginal women and girls, and in particular the level of violent victimization. The Committee emphasizes that cases of missing and murdered aboriginal women continue to cause severe pain and suffering to relatives and communities. The Committee notes that its findings of fact have highlighted that the measures taken to protect aboriginal women from disappearance and murder have been insufficient and inadequate, that the weaknesses in the justice and law enforcement system have resulted in impunity and that no efforts have been made to bring about any significant compensation or reparation. The Committee observes that the protracted failure of the State party to take effective measures to protect aboriginal women, even though a coordinated response was clearly required, continues to have repercussions and serious consequences, despite the recent measures taken. The Committee recalls that gender-based violence seriously inhibits the ability of aboriginal women and their children to enjoy their rights and freedoms. 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 rights set forth in 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 the present 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, personal security, physical and mental integrity and health. The violations outlined above, taken together, therefore constitute grave violations under article 8 of the Optional Protocol. In the light of this finding, there is no need to consider whether the violations have 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 (c), 2 (d), 2 (e), 3 and 5 (a), read in conjunction with articles 14 (1) and 15 (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.

X. Recommendations

216. The Committee makes the recommendations below to the State party, which should be considered and implemented as a whole, including the recommendations to improve the socioeconomic situation of aboriginal women, in order fully to address the issue of missing and murdered aboriginal women and all other forms of violence that aboriginal women experience.

A. Combating violence against aboriginal women

217. The Committee calls upon the State party to take the following measures to address cases of missing and murdered aboriginal women:

Overall

(a) **To ensure that all cases of missing and murdered women are duly investigated and prosecuted;**

(b) **To significantly increase awareness-raising campaigns to ensure that members of the aboriginal community are aware of relevant procedures for reporting missing persons, including of the absence of a waiting period before a person can be reported missing;**

(c) **To ensure that all police agencies follow standardized and mandatory protocols on how to respond to cases of missing and murdered aboriginal women, including that:**

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

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

(iii) **The police communicate regularly with the families of missing persons and provide regular updates on the status of the case in an appropriate manner;**

(d) **To establish a monitoring mechanism for the implementation of the above-mentioned protocols, and to provide for sanctions in instances in which they are not being applied;**

(e) **To consider establishing a national missing persons' office to coordinate all activities related to missing persons and disseminate information to families, and to consider involving aboriginal liaison officers who work with**

affected families and the police in cases of missing and murdered aboriginal women;

(f) To provide adequate culturally-sensitive services to support families of missing and murdered women, including legal and psychosocial counselling in addition to compensation and other appropriate reparation, and to consider taking measures to support families of victims, including, for example, disclosure of truth, public apologies and commemoration of victims;

Data collection

(g) To systematically collect data that is 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, and on cases of missing and murdered women, and to make such data collection mandatory for all police detachments;

Police investigations and law enforcement

(h) To develop and implement appropriate policies or establish mechanisms to ensure inter-jurisdictional and inter-agency coordination of law enforcement agencies and information-sharing and cooperation within Royal Canadian Mounted Police jurisdictions and with other police agencies;

(i) To increase the number of female police officers and aboriginal police officers within all police forces;

(j) To 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 complaints mechanisms

(k) To ensure the independence of oversight bodies to investigate cases of abuse and misconduct of police officers, and in particular:

(i) To consider establishing independent civilian oversight bodies to conduct investigations into reported incidents of police misconduct, including sexual offences by the police, and, in particular, to enhance the independence of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police by ensuring that investigations of misconduct by Royal Canadian Mounted Police officers are not investigated by members of the same body;

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

(l) To ensure that aboriginal women, particularly those living in remote areas, have effective access to existing complaints procedures to challenge police conduct, including by raising awareness among the aboriginal community on the procedure of, and by facilitating the process of, lodging a complaint for victims;

Access to justice

(m) To work in partnership with aboriginal women's representatives to determine the most effective strategies for overcoming barriers to accessing justice and reducing the overrepresentation of aboriginal women in contact with the justice system, whether as victims or as offenders;

(n) To provide sufficient funding for legal aid and make legal aid available to aboriginal women, and free of charge if necessary, in particular for issues related to violence, protection orders, division of matrimonial property on- and off-reserve and child custody;

(o) To address all forms of violence against aboriginal women, both in rural and urban areas, that is perpetrated by aboriginal and non-aboriginal offenders, by ensuring effective access to remedies for all acts of violence;

Victim services

(p) To develop nationwide consistent standards to harmonize the provision of victim services across provinces and territories; ensure proper coordination between 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 activities to raise awareness among aboriginal women about the range of services available to them;

(q) To significantly enhance the provision of culturally-appropriate violence prevention services, shelters, counselling and rehabilitation programmes for aboriginal women victims of violence in all provinces and territories;

(r) To consider adopting a victims' bill of rights aimed at increasing access to victim services and consider including culturally appropriate services for aboriginal women;

Stereotyping

(s) To address conditions and practices that result in overcriminalization and overincarceration of aboriginal women and girls, especially those that are based on institutionalized stereotyping;

(t) To significantly strengthen awareness-raising on aboriginal culture for judges, lawyers, prosecutors, police, other law enforcement officers and service providers; to develop such training in collaboration with aboriginal organizations, including training aimed at eliminating acts of racism and sexism; to ensure that such training is provided continuously throughout the career of law enforcement officers; and to give preference to in-class over online training;

Aboriginal women in prostitution and trafficking

(u) To pay special attention to the needs and situation of aboriginal women in prostitution when reviewing the decision of the Supreme Court of Canada concerning the invalidation of section 213 of the Criminal Code of Canada and ensure that women engaged in prostitution are not criminalized;

(v) To develop rehabilitation, social reintegration and exit programmes specifically targeted at aboriginal women engaged in prostitution;

(w) To conduct studies and surveys on the prevalence and forms of trafficking of aboriginal women and girls within and outside the community and on the possible links with cases of missing and murdered women;

(x) To review the National Action Plan 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, and for the identification of victims of human trafficking among aboriginal women and girls;

(y) To increase its efforts to prevent trafficking through international, regional and bilateral cooperation and information exchange with countries of origin, transit and destination of trafficking.

B. Improving the socioeconomic conditions of aboriginal women

218. The Committee calls upon the State party:

(a) To take comprehensive measures to significantly improve the socioeconomic conditions of the aboriginal community, including the particular conditions affecting aboriginal women both on- and off-reserve;

(b) To collect data disaggregated by sex and aboriginal/non-aboriginal status on the socioeconomic conditions of members of the aboriginal community both on and off the reserves;

(c) To 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;

(d) To address the issue of the disproportionately high number of aboriginal children institutionalized by child welfare authorities, which has an impact on the vulnerability of aboriginal women to violence as they are reluctant to seek help from authorities for fear that their children will be taken away.

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

219. The Committee calls upon the State party to take measures to overcome the legacy of the colonial period and to eliminate discrimination against aboriginal women, in particular:

(a) To take specific 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;

(b) **To 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 eliminate negative stereotypes against aboriginal women;**

(c) **To support initiatives by the aboriginal community to foster pride and self-esteem among its members, including aboriginal women, by providing a strong grounding in aboriginal identity, culture and language and relationship with and responsibility to the land;**

(d) **To 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;**

(e) **To 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 of whether or not the father has recognized the child;**

(f) **To 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

220. The Committee calls upon the State party:

(a) **To take measures to establish a national public inquiry into cases of missing and murdered aboriginal women and girls that must be fully independent from the political process and transparent, with terms of reference to be developed and a commissioner to be selected based on the views of representatives of aboriginal communities in the provinces, territories and national aboriginal organizations;**

(b) **Based on the findings of the national public inquiry, to 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, to ensure the allocation of sufficient human and financial resources for the effective implementation of the plan of action and to ensure that all measures identified in the recommendations made by the Committee in the present report are reflected in the plan of action;**

(c) **To establish a mechanism for monitoring and evaluating implementation of the national plan of action, in coordination with the aboriginal community, so that corrective measures can be taken if deemed necessary.**