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Mandate of the Special Rapporteur on the rights of indigenous peoples.

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Excellency,

I have the honor to address you in my capacity as Special Rapporteur on the rights of indigenous peoples in accordance with General Assembly resolution 60/251 and Human Rights Council resolution 15/14.

In this connection, I would like to draw the urgent attention of your Excellency's Government to **the situation of violence affecting Aboriginal women in Canada**. The information I have received indicates an alarming pattern of violence afflicting indigenous women throughout Canada and includes allegations of an inadequate response by government and police authorities to this situation. In addition, I have received allegations of what has been described as a de facto exclusion of the Native Women's Association of Canada, the principal national Aboriginal women's organization in the country with extensive experience documenting cases of missing and murdered Aboriginal women, from participating in an official fact-finding inquiry on cases of missing and murdered women in the province of British Columbia.

According to the information received:

Aboriginal women (First Nations, Métis and Inuit) have for decades been exposed to a situation of particular vulnerability against acts of violence, in the form of a proportionately alarming rate of disappearances and deaths, throughout the entire country. It is alleged that police authorities have not paid serious attention to investigating and solving these cases due to indifference and racial prejudices against Aboriginal women. Violence against Aboriginal women in Canada has been alleged to be chronic and extreme. Studies conducted about this situation indicate that Aboriginal women in Canada are five to seven times more likely than other women to die as a result of violence, and three times more likely to be assaulted.

The Native Women's Association of Canada (NWAC) has extensively documented the known cases of missing and murdered Aboriginal women. The NWAC represents Aboriginal women, particularly First Nations and Métis

women, and is generally viewed as the national voice representing Aboriginal women in Canada. The organization has representation in meetings of Canadian leaders and makes local and national recommendations on programs, policy, legislation and initiatives affecting Aboriginal women and girls.

NWAC has documented at least 582 cases of missing and murdered Aboriginal women and girls. Of these 582 cases, 393 (or 67%) involved women or girls who died due to homicide or negligence, 115 (or 20%) involved women and girls who have gone missing, and 21 cases (or 4%) involve deaths that police attributed to natural or accidental causes but that community members regard as having occurred under suspicious circumstances. Finally, 53 cases (9%) involve women or girls whose status as murdered or missing has not been confirmed by NWAC but who are suspected by Aboriginal community members to have been murdered or to be missing. NWAC was able to document the age of women in 85% of these cases. Slightly over half involved women and girls under the age of 31; of these, 17% involved girls under the age of 18 years.

Approximately 39% of the documented cases occurred in the last decade, 17% occurred during the 1990s, and the remainder in the 1980s or earlier. The majority of these cases (60%) occurred in urban areas, while the rest occurred in a rural area or on a reserve. Cases of missing and murdered Aboriginal women have been documented throughout the entire country, but are more prevalent in the western provinces, most notably British Columbia, Alberta and Saskatchewan. While the majority of the women were killed by a current or ex-partner or some kind of acquaintance, the statistics revealed that Aboriginal women are almost three times more likely than other women to be killed by a stranger. In addition, it was found that Aboriginal women experience violence by both Aboriginal and non-Aboriginal offenders.

According to the information received, most of the cases involving murdered Aboriginal women have remained unsolved. The findings by NWAC indicate that charges were brought in 53% of the cases of murdered Aboriginal women, which is significantly lower than the national average of 84% for charges brought in murder cases overall. In 40% of cases of murdered or missing Aboriginal women, no charges were brought, and the remaining 7% of cases were either determined to be suicide or the status of the case was unknown.

Factors that contribute to the situation of violence

Reportedly, Aboriginal women in Canada are highly vulnerable to this pattern of violence because of the situation of social and economic marginalization and poverty that they face. Due to this situation, Aboriginal women and girls have disproportionately been affected by many social ills such as drug and alcohol dependency, suicide, participation in gangs, and prostitution, especially in urban areas. According to sources, the reality faced by Aboriginal women is a result of historic and contemporary forms of discrimination against Aboriginal peoples in

Canada. It is believed that a root cause of this violence can be attributed to State policies during the 19th and 20th centuries that resulted in forced removal of Aboriginal children from their communities and their placement into residential schools. Many cases of physical, sexual abuse and deaths of Aboriginal children in residential schools have been documented.

Family members of Aboriginal women who have been murdered or are missing reportedly believe that police authorities have not done enough to investigate and prosecute these cases due to indifference and racially discriminatory attitudes on their part. It is alleged that many police authorities do not take these cases seriously because of stereotypical notions about Aboriginal female victims; they regard aboriginal women as having been responsible for what happened to them because they were under the influence of drugs or alcohol, they were running away from their homes, or because they were engaged in prostitution.

Further, effective investigation of these cases has at times been hindered due to unclear and overlapping jurisdictional lines between federal, provincial, municipal and First Nations. A cited example is when an Aboriginal woman from a reserve disappears outside of the reserve and the family members who want to report it get conflicting information from police about whether a missing persons report needs to be filed in the home community or in the area where the person went missing. It is further reported that jurisdictional conflicts also affect the types of victim services available to family members, which may vary depending on whether a case falls under federal, provincial or municipal jurisdiction.

In this connection, it is alleged that the Government of Canada has not instituted a comprehensive and effective action plan for addressing the root causes and effects of violence against Aboriginal women and girls. Similarly, it is alleged the Government has not taken action to improve the capacity of the police and justice system to protect Aboriginal women and girls and adequately respond to incidents of violence as they occur.

The Missing Women Commission of Inquiry

The Missing Women Commission of Inquiry was established in September 2010 by the Government of British Columbia in order to inquire about the facts, police investigations and official decisions related to the disappearances and murders of over 33 women that occurred between 1997 and 2002 in the city of Vancouver's Downtown Eastside. It will also study disappearances and murders that have occurred along Highway 16 in northern British Columbia, known by many as the "Highway of Tears". The Commission of Inquiry is also mandated to look into the circumstances of criminal proceedings against a well-known serial killer of women that were stayed, and to recommend changes for the conduct of investigations of murdered and missing women in British Columbia. The inquiry is scheduled to begin hearings on 11 October 2011.

On 2 May 2011, the Commissioner appointed for the inquiry granted full standing to NWAC to participate in the proceedings. Full standing in this type of inquiry provides a party the right to cross-examine witnesses, present evidence, and make submissions that form part of the evidentiary record. The Commissioner also made a recommendation to the Attorney General of British Columbia that NWAC be provided financial assistance in order for it to pay for legal counsel to facilitate its participation in the inquiry. However, on 19 May 2011 the Attorney General of British Columbia determined funding would be provided for only one lawyer to represent the families of the women murdered by the aforementioned serial killer, while other groups granted standing by the Commissioner, including NWAC, were denied funding.

On the other hand, publicly-funded counsel will be available for the Vancouver Police Department, the Royal Canadian Mounted Police and the Criminal Justice Branch of the Attorney General's Ministry. Consequently, according to the allegations, the government and police representatives under scrutiny will be better represented during the inquiry than the Aboriginal women victims.

The Attorney General's decision allegedly represents a de facto denial of NWAC's ability to obtain counsel as well as to participate in the inquiry on an equal footing with State officials during the fact-finding hearings. The inability of NWAC to pay for counsel undermines its ability to effectively engage in cross-examination of government and police officials and to challenge and probe the accuracy of the evidence presented during the inquiry process. Further, the NWAC would not be able to bring to light the particular issues faced by Aboriginal women concerning racial and gender discrimination and other social and economic factors that make Aboriginal women particularly vulnerable to violence.

According to the information received, the Commissioner of the Inquiry has urged the Attorney General to reconsider its position. In a letter to the Attorney General dated 30 June 2011, the Commissioner stated, "It would be the height of unfairness to require underrepresented individuals to cross-examine police who are represented by highly qualified counsel". The letter furthermore pointed out that NWAC's participation was crucial due to its work gathering evidence and information related to missing and murdered Aboriginal women, and therefore "[t]hey have a direct interest in the outcome of this hearing and a large role to play in ensuring that the voice of Aboriginal women is represented in the Inquiry process". The Attorney General, however, has not changed its decision.

Furthermore, it is reported that the denial of funding to NWAC and other groups is the first time that a branch of the government has ever refused to provide funding to a party that has been granted standing in an official inquiry of this kind. Therefore, it is alleged that the denial of funding in this case is discriminatory.

The Commission of Inquiry has reportedly tried to ameliorate the effects of the Attorney General's decision by contracting two independent lawyers in August 2011, one to represent the interests of victims of the Downtown Eastside Vancouver and the other to represent the interests of Aboriginal women. However, the appointment of this independent counsel was allegedly not made with the input or consent of NWAC and the Aboriginal women it represents. Further, the independent counsel will not be accountable to Aboriginal women nor receive instructions from them as to how to proceed during the Inquiry. By contrast, the Vancouver police, the Royal Canadian Mounted Police and the Criminal Branch of the Attorney General's Ministry will be represented by counsel whom they get to choose and instruct.

While I do not wish to prejudge the accuracy of the above allegations, I would like to refer your Excellency's Government to relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007.

Article 7(1) of the Declaration states that "[i]ndigenous individuals have the rights to life, physical and mental integrity, liberty and security of person." In regards to indigenous women, article 22 of the Declaration provides that "States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination". Article 18 of the Declaration affirms the right of indigenous peoples to "participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures". Furthermore, as stated in article 39, indigenous peoples "have the right to have access to financial and technical assistance from States... for the enjoyment of the rights contained in this Declaration."

I would also like to refer your Excellency's Government's attention to previous observations by United Nations bodies regarding this particular subject matter. In its 2006 Concluding observations on Canada, the Human Rights Committee expressed concern that "Aboriginal women are far more likely to experience a violent death than other Canadian women" and recommended Canada to "gather accurate statistical data... on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system". The Committee further noted that "[t]he State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations".¹

Similarly, in its 2008 examination of Canada, the Committee on the Elimination of Discrimination against Women urged Canada to "examine the reasons for the failure to investigate the cases of missing or murdered aboriginal women and to take the necessary steps to remedy the deficiencies in the system... [as well as to] carry out an analysis of

¹ Concluding observations of the Human Rights Committee: Canada, CCPR/C/CAN/CO/5 (26 April 2006), para. 23.

those cases in order to determine whether there is a racialized pattern to the disappearances and take measures to address the problem if that is the case”.²

Most recently, during the universal periodic review of Canada by the Human Rights Council in 2009, various States made specific recommendations to Canada to address the discrimination faced by Aboriginal women, to take steps to investigate and sanction those responsible for the deaths and disappearances of indigenous women, and to ensure the protection of Aboriginal women against violence.³

I also take note of your Excellency’s Government’s response to the above recommendations, including its statement to the effect that “[t]he issue of missing and murdered Aboriginal women is a pressing concern for Canada” and that it has “dedicated resources to investigate and solve cold cases involving murdered Aboriginal women”.⁴ In its response, your Excellency’s Government stated that it “commits to identifying the causes of violence against Aboriginal women and developing appropriate responses in consultation with Aboriginal and civil society organizations. Governments are working together to strengthen preventative measures and improve criminal justice systems responses to violence against all women, including Aboriginal women”.⁵

In view of the urgency of the matter, I would appreciate an immediate response regarding the allegations of exclusion of Aboriginal women from effective participation in the Missing Women Commission of Inquiry in British Columbia.

Further, as I continue to monitor and clarify the circumstances surrounding the present situation, I would be interested in knowing your Excellency’s Government’s views on the accuracy of the information contained in this letter, and I would be grateful to receive any additional information your Excellency’s Government may deem relevant. In particular, I would like to know further information about:

1. Measures taken by your Excellency’s Government to investigate and prosecute cases of violence against Aboriginal women, as well as to provide culturally appropriate services to survivors and relatives of victims of this violence;
2. Measures taken by your Excellency’s Government to address the alleged root causes of the situation of violence against Aboriginal women, including factors related to racial and sexual discrimination, poverty, social and economic marginalization as well as the effects of intergenerational trauma

² Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada (CEDAW/C/CAN/CO/7 (7 November 2008), para. 32.

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, A/HRC/11/17 (5 October 2009), paras. 27, 33-36.

⁴ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, Addendums: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/11/17/Add.1 (8 June 2009), para. 49.

⁵ Ibid., para. 50.

suffered by Aboriginal peoples that bear relevance to the causes of this situation;

3. The reasons for which funding was denied to the Native Women's Association of Canada (NWAC) in its participation in the Missing Women Commission of Inquiry of British Columbia;
4. The attempts your Excellency's Government has made to provide for the effective participation of Aboriginal women in the Missing Women Commission of Inquiry of British Columbia. In addition, please provide information on measures taken to address concerns described in this letter regarding the disadvantages faced by Aboriginal women representatives in terms of access to effective representation by counsel as compared to counsel available for Government, federal and provincial police authorities.

I undertake to ensure that your Excellency's Government's response will be taken into account in my assessment of this situation and in developing any recommendations that I may make for your Excellency's Government's consideration pursuant to the terms of my mandate.

I would like to conclude by commending Canada for the establishment of the Missing Women Commission of Inquiry in British Columbia, which I consider to be a very important and meaningful first step to addressing this serious problem. Because of the significance of this inquiry, I respectfully urge your Excellency's Government to give close consideration to taking all the measures necessary to facilitate the participation of the Native Women's Association of Canada and other representatives of Aboriginal women in this Inquiry.

Please accept, Excellency, the assurances of my highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples