

Missing and Murdered Aboriginal Women and Girls

- A Three-Part Webinar Series -

Webinar 2: Violence against Women and the Due Diligence Standard

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Obligation of Due Diligence

The duty to act with due diligence has four elements:

- to prevent
- to investigate
- to punish
- to remedy or make reparations

Session Two: IACHR and CEDAW reports Findings and Recommendations

- Facts
- Violations
- Recommendations
- What is important here?

Facts

- Aboriginal women and girls are exposed to sexual violence and murder committed by perpetrators both within and outside Aboriginal communities.

Facts - Colonization

- Colonization and other post colonial policies are a root cause of violence
 - Residential schools
 - Sex discrimination in the *Indian Act*

Colonization causes poverty & social dislocation

- The history of discrimination beginning with colonization...
- Laid the foundations for pervasive violence against indigenous women by creating circumstances that contribute to the risks they face:
 - economic poverty
 - social dislocation
 - psychological trauma

Facts – Social & Economic Disadvantage

- The disadvantaged social and economic conditions increase Aboriginal women's vulnerability to violence, and their capacity to escape it.
- Social and economic marginalization is a root cause of the violence, and it needs to be addressed urgently or the violence will persist.

Facts - Social & Economic Disadvantage

- Social and economic disadvantage of Aboriginal women and girls encompasses
 - poverty
 - inadequate housing
 - underemployment
 - lower levels of educational attainment
 - overincarceration
 - overrepresentation of Aboriginal children in the child welfare system
 - lack of access to the justice system
 - inadequate services, shelters and support systems

Facts - Policing – Inadequate Response

- Police responses have been inadequate with respect to investigating reports of disappearances, responding to families and friends, timeliness, diligence in investigation and prosecution.
- Aboriginal women have not been offered adequate protection.

Facts - Policing – No Trust

- A historically fractured relationship between Aboriginal women and all levels of the justice system.
- Aboriginal women are sometimes reluctant to seek help from authorities when they are victims of violence because of the discrimination they face from the child welfare system, and their fear of losing their children.

Facts - Policing – Co-ordination, Complaints

- A lack of inter-jurisdictional co-ordination among police forces and justice officials and no mechanism for needed co-ordination.
- Canada's police complaints mechanisms are weak and police cannot effectively protect Aboriginal women without a robust complaints mechanism.
- Lack of disaggregated data

Facts - Policing & British Columbia

- The police failures identified by the Missing Women Commission of Inquiry (MWCI) in British Columbia persist.
- Implementing fully the recommendations of the MWCI would only be a start on fulfilling the obligations of the BC and Canadian governments, because MWCI recommendations deal only with policing, and only with the investigative function.

Access to Justice

Canada has not taken adequate steps to ensure that Aboriginal women can access the justice system and has not begun to deal with the magnitude of the required changes.

Overall Conclusions

- The current measures to address the murders and disappearances are inadequate.
- Canada has failed to deal with violence against Aboriginal women as a problem of socio-economic discrimination and of intergenerational trauma.
- Canada has failed to deal with violence against Aboriginal women as a serious large-scale problem requiring a comprehensive co-ordinated response.

National Public Inquiry

The reluctance of the federal government to call a national public inquiry creates a major obstacle to resolving the issue of missing and murdered women and ensuring reconciliation with the Aboriginal community

National Plan

Action on the ground must be informed by a master plan based on a consultative process and must take into account all dimensions of the problem.

Article 2 of CEDAW

States parties are obliged

- to take appropriate and effective measures to overcome all forms of sex discrimination that foster violence against women, whether by public or private actors.
- not to cause, or permit, discrimination, *either by acts or omissions*.

Articles 3, 5, 14, 15

Article 3 – obliges governments to take all appropriate measures in all fields to ensure the full development and advancement of women.

Article 5 – obliges governments to take all appropriate measures to modify the social and cultural conduct of men and women, in order to eliminate prejudices...and practices that are based on ideas of the superiority of one sex

Article 14 – obliges governments to take all appropriate measures to eliminate discrimination against women living in rural areas...

Article 15 – requires governments to ensure that women are equal before the law.

Violations - 1

- The failure to take into account the increased vulnerability of Aboriginal women because of discrimination based on both sex and race.
- The failure to take into account the particular problems of Aboriginal women living in remote communities.

Violations - 2

- The failure to take steps to address the stereotyping of Aboriginal women and girls, as prostitutes, transients or runaways and having high-risk life styles, which caused an indifferent attitude towards reports of missing Aboriginal women

Violations - 3

- The failure of the established legislative and institutional legal framework to provide effective protections and remedies.
- The failure to provide sufficient coordination between the different jurisdictions and institutions of the State.
- The failure to realize the social, economic and cultural rights of Aboriginal women which increased their vulnerability to violence.
- The protracted failure of the State party to take effective measures to protect Aboriginal women, when a coordinated response was clearly required.

Recommendations - Police

- mandatory protocols for missing women investigations and reporting
- monitoring mechanisms for these protocols
- support services for families
- reliable systems for data collection
- mechanisms for inter-jurisdictional and inter-agency co-ordination of police
- independent and robust police oversight bodies
- access to justice, including sufficient funding for legal aid
- adequate and appropriate victim services
- mandatory training for police, justice officials and judges

Recommendations – Social and Economic Marginalization

- access to justice, including sufficient funding for legal aid
- measures to address stereotyping
- measures to address overcriminalization
- assistance to women exiting prostitution
- ***comprehensive measures to improve socio-economic conditions, including national anti-poverty plan, food security, adequate housing, education and employment strategies***
- ***measures to overcome the legacy of colonization, including amending the Indian Act to remove sex discrimination***

Recommendations – National Public Inquiry

- Establish a national public inquiry – fully independent and transparent - that can develop a national action plan and a co-ordinated mechanism for overseeing it, along with sufficient resources for effective implementation.

Implement All Recommendations

- The national action plan must include **all** measures identified by the CEDAW Committee, and recommendations must be implemented as a whole.

Unprecedented investigations

- First time Canada has been investigated by the IACHR & any UN Committee
- Significant because Canada is a northern, western, with a reputation for upholding rights, and resources & infrastructure to respond to the violence

Specific focus on Aboriginal women

- Reports expose colonizer policies and their connection to today's violence against Aboriginal women.
- The differential effects of colonizer laws and policies on women and girls are often overlooked, or treated as of only marginal importance, when the focus is on Aboriginal peoples. These reports makes Aboriginal women's lives matter.

Putting the violence in a human rights framework

- The reports shift the terrain from blaming the Aboriginal women and Aboriginal communities to the rights of the women and girls and the obligations of government.
- Make it possible to understand Aboriginal women and girls as rights-holders.

Systemic Discrimination

- Canada's courts and human rights tribunals and commissions are hesitant to acknowledge systemic discrimination
- The reports reinforce that the violence against Aboriginal women and girls is systemic – a pattern of discrimination that affects a group of women that can only be remedied by systemic measures.

Social and economic marginalization

- The reports deals with both failed police response *and* failed government response to the women's social and economic marginalization.
- Governments want to focus solely on police response, treating the crisis as a matter for criminal prosecution of individual perpetrators.

Canada violates international law by failing to act effectively

- The CEDAW report finds Canada in violation of articles 1, 2, 3, 5, 14, and 15 of the *Convention on the Elimination of All Forms of Discrimination against Women*
- This finding is based on the failures of the state to take positive action to respond to the violence

What is important here?

- Unprecedented investigations
- Specific focus on Aboriginal women
- Violence set in a framework of rights and obligations
- Focus on systemic discrimination
- Focus on social and economic marginalization
- Failures to act are violations of international law