

HUMAN RIGHTS PROTECTION IN CANADA: CASE OF MISSING AND MURDERED ABORIGINAL WOMEN

Canada has a long recognized tradition of individuals' freedom. The common law tradition, the Constitution and statutory bills of rights have been a source of protection of human rights. For years Canada has been viewed as an example to follow in this area internationally¹. Although the negligence of the Canadian government to investigate the case of aboriginal² missing and murdered women questions this position. Several international human rights organisation indicated that Canada did not properly address the case of missing and murdered women and committed a violation of the rights of indigenous peoples.

¹ The UN *Human Development Index*, http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf (access – 10.05.2016); *Human Rights Risk Index*, http://reliefweb.int/sites/reliefweb.int/files/resources/2014_Human_Rights_Risk_Index_Map.pdf; (access – 10.05.2016); *Freedom in the World 2015*, <https://freedomhouse.org/report/freedom-world/freedom-world-2015#.V6RoLh94wE> (access – 10.05.2016); *Amnesty International*, 25 February 2015, 101/2015; Ian Vasquez, Tanja Porcnik, *The Human Freedom Index*, Fraser Institute, Washington, D.C. 2015.

² The term Aboriginal was used in the Constitution Act, 1982 .Section 35(2) defines Aboriginal peoples as including Indian, Inuit and Métis. Generally this term has gained legal status and has particular connotation within Canadian context. Throughout this paper the term Aboriginal (with letter 'A' capitalised) describes this legal connotation. Note that there are many collective nouns describing original inhabitants of Canadian territory before the colonisation in the 15th century. In the past the term Indians was widely used but today it applies to one specific group. In this article the words indigenous people, natives and aboriginals (without letter 'A' capitalised) interchangeably signify these original inhabitants.

Taking into consideration the consequences of colonisation for indigenous peoples, this analysis will discuss the framework of human rights protection in Canada from the perspective of the case of missing and murdered aboriginal women in the last fifty years.

THE CANADIAN SYSTEM OF HUMAN RIGHTS PROTECTION

The human rights system in Canada is based on the international and national human rights legislation. Canada's determination to protect human rights abroad and internally is widely recognised. A Canadian lawyer and scholar John Humphrey played an important role in drafting the Universal Declaration of Human Rights (hereinafter Declaration) of 1948 which Canada accepted. Canada also signed following eight main international human right treaties and optional protocols of the United Nations System:

- Convention on the Prevention and Punishment of the Crime of Genocide (1952),
- International Convention on the Elimination of All Forms of Racial Discrimination (1970),
- International Covenant on Economic, Social and Cultural Rights (1976),
- International Covenant on Civil and Political Rights (ICCPR) (1976):
 - Optional Protocol to the ICCPR (complaint mechanism) (1976),
 - Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (2005),
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1981):
 - Optional Protocol to CEDAW (complaint mechanism) (2002),
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987),
- Convention on the Rights of the Child (CRC) (1991):
 - Optional Protocol to the CRC on the Involvement of Children in armed conflict (2000),
 - Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2005),
- Convention on the Rights of Persons with Disabilities (2010).

Although Canada joined the Organization of American States (OAS) in 1990, it did not ratify the American Human Rights Convention³. Nevertheless Canada is committed to observe the human rights obligations set out by the OAS Charter. So Canadians or non-governmental organizations (NGO) may also fill petition to the Inter-American Commission on Human Rights.

Internally, human rights in Canada are protected by federal, provincial and territorial laws⁴. First of all, in 1867 Canada adopted the Constitution similar in their principle to that of the United Kingdom. This act anticipated that the parliamentary system, with all its implicit values, among them protection of individual rights, was to be reproduced in Canada⁵.

At the end of the Second World War the anti-discriminatory legislation was introduced in Canada. Already in 1944 the Government of Ontario passed the Racial Discrimination Act⁶ that prohibited the publication, displaying or broadcasting of any material involving racial or religious discrimination. In 1947 the Saskatchewan's legislature voted for the Saskatchewan Bill of Rights Act that prohibited discrimination in number of areas such as employment, housing, the workplace, educations, and land. It was followed by other related legislation. Soon after, all provinces and territories also implemented anti-discriminatory provisions.

The domestic implementation of the Declaration obliged the federal authorities to introduce anti-discriminatory legislation. In 1960 the federal parliament passed the Canadian Bill of Rights⁷. The act declared that Canada will exist without discrimination by reason of race, national origin, colour, religion or sex. The Bill provided a recognition and protection of basic human rights and fundamental freedoms⁸. The shortcoming of this act pressed for a new legislation. First in 1977 the federal parliament

³ Canada did not sign the American Human Rights Convention because several provisions breaches the Canadian law.

⁴ Canada is a federal state. It comprises ten provinces: British Columbia Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland, Nova Scotia, New Brunswick, Prince Edward Island and three territories: Yukon, the Northwestern Territories and Nunavut, so the jurisdiction is divided between federal provincial and territorial authorities. So the legislative power is shared by federal parliament, provincial and territorial legislative assemblies

⁵ *British North America Act* (BNA), 1867, 30–33 Vict., c3 (U.K),

⁶ Racial Discrimination Act 1944 S.O. 1944, c. 51

⁷ *Canadian Bill of Rights*, S.C.1960, c.44.

⁸ In the Part I the act recognized the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; the right of the individual to equality before the law and the

enacted the Canadian Human Rights Act – CHRA (amended in 1988). The main purpose of the CHRA is guarantee Canadians equality, fair treatment and an environment free from discrimination. It contains anti-discriminatory provisions that protect employees of the federal government and private companies regulated by the federal law, or individuals who receive services from these institutions⁹. On the federal level the Canadian Human Rights Commission and the Canadian Human Rights Tribunal¹⁰ administer, promote, and adjudicate Canada's federal human rights and employment equity legislation¹¹. Similarly on the provincial level there are commissions and tribunals that apply provincial anti-discriminatory provisions to safeguard individuals from discrimination.

The most significant piece of human rights legislation is the Canadian Charter of Rights and Freedoms¹² (hereinafter Charter). Entrenched to the Constitution in 1982, the Charter broadens the scope of protection and recognition of human rights¹³. It is also more explicit with respect to the guarantee of rights and the enforcement by the courts. The Charter binds all the governments in Canada

The Charter specifically addressed the Aboriginal peoples of Canada by accommodating their rights and freedoms recognized in the Royal Proclamation of 1763¹⁴ and acquired in Canada through land claims.

protection of the law; freedom of religion; freedom of speech; freedom of assembly and association; and freedom of the press

⁹ These are: federal government and departments, Crown corporations, banks, airlines and other federally regulated employers and service providers

¹⁰ Canadian Human Rights Tribunal, <http://www.chrt-tcdp.gc.ca/index-en.htm> (access – 10.06.2016)

¹¹ Employment equity legislation such as the Employment Equity Act requires employers to increase the representation of four designated groups: women, people with disabilities, Aboriginal people and visible minorities.

¹² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11.

¹³ The *Charter* guarantees fundamental freedoms (of conscience, religion, thought, belief, expression media, peaceful assembly and association); democratic rights (to vote, maximum duration of legislative bodies that is set to five years, an annual sitting of legislature at least once in a year,; mobility rights, legal rights (to life, liberty, security of the person, freedom from unreasonable search and seizure and detention and imprisonment); equality of rights that guarantee equal treatment before and under the law, and equal protection of the law without discrimination; language rights that confirm the use of French and English;

¹⁴ *The Royal Proclamation of 1763* was a British Crown statement that guaranteed certain rights to Nations.

Section 35 of the Constitution Act, 1982 provides protection to the aboriginal and their treaty rights¹⁵.

Generally for years Canada has been seen as a country with a solid record on core civil and political right protection. However, the Canadian human rights organisations such as the Human Rights Watch,¹⁶ the Native Women's Association, the Canadian Feminist Alliance for International Action and other women's rights advocates alerted international organizations of the issue of missing and murdered aboriginal women. The Inter-American Human Rights Commission, the Amnesty international, the Human Rights Watch, the UN Committees: on the Elimination of Discrimination against Women (UNCEDAW) and the Human Rights (UNHRC) indicated that Canada failed the grade on a number of human rights in domestic policies.

First the Inter-American Commission on Human Rights indicated that Canada's government failure to act in the case of missing and murdered women violates human rights. The Amnesty International in the October 2014 report: *Stolen sister*¹⁷ examined the factors that contributed to a risk of violence against indigenous women. It also concluded that the federal government inadequately monitored the case. In March, 2015 UNCEDAW established that Canada had committed a „grave violation” of the rights of indigenous women by failing to promptly and thoroughly investigate the high levels of violence they suffer. It also called attention to their mistreatment by the police. The Committee concluded that this failure have significantly affected the right to life and personal security; the right to physical and mental integrity of aboriginal women. Canada has thereby violated a number of articles of CEDAW. These include the obligation to eliminate all forms of discrimination against women; the right to equal protection before the law and to an effective remedy; the obligation on states to combat and eliminate harmful stereotypes; and the right of aboriginal women to enjoy adequate living conditions on and off reserves¹⁸. UNHRC

¹⁵ Treaty rights are indigenous people's right, which they obtained by signing treaties with the British Crown or the Canadian government.

¹⁶ Human Rights Watch reviews human rights practices in more than 90 countries.

¹⁷ *Stolen Sister: A human Rights Response to Discrimination and Violence against Indigenous Women in Canada*, <https://www.amnesty.ca/sites/amnesty/files/am-r200032004enstolensisters.pdf> (access – 12.08. 2016).

¹⁸ *Canada's failure to effectively address murder and disappearance of Aboriginal women 'grave violation' - Un expert*, United Nations Human Rights Office of

expressed similar concern. Finally, the Human Rights Watch World Report 2016¹⁹ indicated that Canada's global reputation as a defender of human rights was tarnished by failure of the Stephen Harpers government²⁰, to take essential steps to remedy serious human right complain. Particular areas of concern encompassed the rights of indigenous people and violence against indigenous women.

ABORIGINAL PEOPLES OF CANADA

The aboriginal population in Canada includes: the Indian²¹ or First Nations, Inuit and Metis. In 2011 around 1.4 million Canadians had an aboriginal identity, representing 4.3 percent of the total Canadian population²². The largest number of them live in Ontario, and in Manitoba and Saskatchewan. The First Nations communities are spread across Canada. To a large extent the First Nations people live on reserves. There are more than 2400 reserves that are inhabited by more than 600 First Nations. Inuit inhabit the North, and Metis resides mostly in the Western part of Canada. The aboriginal population is a growing population, between 2006 and 2011 the number of them increased by 20 percent²³.

Table 1. Aboriginal identity population, Canada, 1996–2011

	Aboriginal identity population, Canada 1996–2011							
	1996		2001		2006		2011	
	Percent	Number	Percent	Number	Percent	Number	Percent	Number
Aboriginal population	2.8%	799,005	3.3%	976,305	3.8%	1,172,785	4.3%	1,406,035
First Nations	1.8%	529,040	2.1%	608,850	2.2%	698,025	2.6%	851,560
Metis	0.7%	204,115	1.0%	292,305	1.2%	389,780	1.4%	451,795
Inuit	0.14%	40,220	0.15	45,070	0.16%	50,485	0.2%	59,445

Source: Aboriginal population in Canada, Statistics Canada, Census: 1996; 2001; 2006 and National Household Survey 2011.

High Commissioner, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656> (access – 08.07.2015).

¹⁹ Human Rights Watch World Report 2016 <https://www.hrw.org/world-report/2016/country-chapter/Canada> (access – 10.08.2016).

²⁰ The Prime Minister of Canada from 2006 to 2015.

²¹ The name Indian which is use to designate one specific group in Canada.

²² *Aboriginal identity population*, Statistics Canada, National Household Survey, 2011.

²³ *Ibidem*.

When Europeans commenced colonization of North America at the end of the 15th century they encountered sizable number of culturally diverse indigenous nations with distinctive cultural practices, languages and tradition. The estimation of number of native population during the late 15th century ranges from two to seven million in North America and from 200 thousand to two million in Canada²⁴. The Royal Commission on Aboriginal Peoples pointed out that the figure of 500 thousand natives living in Canada at the time of initial sustained contact is the most widely accepted estimate²⁵. Over fifty tribes existed on Canadian soil each of which spoke a separate language or dialect and had diverse custom²⁶. The anthropologists distinguished four major group of native peoples²⁷: migratory tribes of the East Woodlands²⁸, agricultural tribes of the East Woodland²⁹s, plain's tribes³⁰ and tribes of Pacific Coast³¹.

First, in the early 17th century French founded colonies in the eastern part of North America. To maintain them France depended on its alliances with indigenous peoples.³² At the very beginning the natives generally tolerated newcomers, helped them to survive and traded with them. As historians point out French approach with the natives was more conciliatory and open than other European colonists³³. Nevertheless French made attempts

²⁴ R. Thornton, *Population history of Native North Americans* in: *Population History of North America*, M.R. Haines, R.H. Steckel, Cambridge 2000, p. 11.

²⁵ C.V. O' Donell, *Native Populations of Canada*, in: *Handbook of North American Indians. Indians in contemporary Society*. Vol. 2, G.A. Bailey, W.C. Sturtevant (ed.) Government Printing Office, Ottawa, p. 285.

²⁶ See: D. Jenness, *The Indians of Canada*, Ottawa: Minister of Supply and Services Canada, 7th edition 1977 (originally published in 1932); R. Bothwell, *The Penguin History of Canada*, Toronto 2006; J. Grabowski, *Historia Kanady*, Warszawa: Prószyński, 2001; History of Canadian Indians 1763–1840, <http://faculty.marianopolis.edu/c.belanger/quebechistory/encyclopedia/HistoryofCanadianIndians-1763-1840.htm> (access – 16.05.2015)

²⁷ Ibidem

²⁸ E.g.: Micmac, (Nova Scotia), Malecite (New Brunswick), Montagnais and Naskapi (Quebec), Algonquians (Ottawa), Ojibwa (Ontario), Cree (from Labrador to the praires).

²⁹ E.g. Iroquois, Hurons.

³⁰ E.g. Blackfoot, Sarcee, Assniboine

³¹ E.g. Tlinkit, Haida, Tsimshian, Bella Coola.

³² It is estimated that France formed alliance with 23 nations except with the Iroquois Five Nations League. In 1701 the French signed a treaty the Grate Peace of Montreal that last nearly sixty years.

³³ F. Parkman, *France and England in North America*: Vol.2 of 2, Library of America, New York, 1983, (first published 1877).

to assimilate them through marriage, Christianisation and language. Especially young children were vulnerable. They were forced to study in boarding schools run by Jesuits. In the end, the assimilation program did not work out³⁴.

One hundred years later, the British joined the contest to take over French colonies. Both countries used the native tribes during colonial battles between them. The Great Britain prevailed. As a result, according to the Treaty of Utrecht of 1713, France ceded to Great Britain Newfoundland, territories of Hudson Bay Company³⁵ and part of Nova Scotia. The French defeat on the Plains of Abraham in Quebec City in 1759, marked the end of French hegemony in North America which was confirmed by the Treaty of Paris in 1763. The Great Britain took over almost all French possession in North America. Several tribes of the Great Lakes and Ohio Valley that allied with France tried to expel the British forces from the formerly French lands and establish the autonomy for natives. United by Chief Pontiac, the native tribes attacked and seized several British forts around the western Great Lakes in May of 1763³⁶. At the very beginning, it seemed that so called Pontiac War had succeed in defeating the British but the squabbles between various tribes, no French support (soldiers and officials left the colony) and casualty rate forced Potniac to sign a treaty with the British in 1766. Meantime, the British authorities recognised the native people's rights to the lands they occupied. The Royal Proclamation of 1763 granted them the 'Indian Territory' that spread from Quebec by Great Lakes region to Ohio³⁷. The Proclamation forbade settlers from claiming land from aboriginals until it had been acquired by the Crown first. However, the rules were not implemented and the Proclamation did not stop the further expansion of the settlers on native lands. Today the Proclamation is seen as an important factor of the recognition of existing Aboriginal rights and title.

³⁴ M. Wade, *The French Canadians, 1760–1945*. Toronto 1955.

³⁵ Hudson Bay Company was a British enterprise that controlled fur trade in the region. owned from 1670 to 1870 Rupert's Land which included Manitoba, Saskatchewan, southern Alberta, northern part of Ontario and Quebec.

³⁶ K.R. Widder, *Beyond Pontiac's Shadow: Michilimackinac and Anglo-Indian War of 1763*, 2013

³⁷ *The Royal Proclamation*, October 7, 1763, given at Court at St. James' s the 7th Day of October 1763, in the Third Year of King George reign.

After the American War of Independence around 50,000 Loyalist moved to the British colonies in the north, mainly to the Maritimes³⁸. Gradually the natives were pushed out from their ancestral lands and moved to reserves. Additionally the warfare among the tribes, the exposure to diseases that locals had no resistance and alcohol decimated the native population. The scholars generally agree that primary cause of the massive decline of the native population was the widespread epidemic disease such as measles, smallpox, and influenza.

In the mid-19th century the British authorities returned to the concept of reserves earlier introduced by the French Jesuits. Colonial officials either signed various treaties with aboriginal population or created reserves through orders-in council, so the practices varied between regions³⁹. The government either selected Crown land or purchased private land for the purpose of forming a reserve. Also treaties with aboriginals included provision for the creation of reserves which varied in size cross the country from 640 acres per family of five in Ontario to 20 acres per family in British Columbia. The system for determination the location also differed but many of reserves were created outside a band traditional territory⁴⁰. Once again the program to assimilate the aboriginals within white society was introduced.

Canada, established in 1867 in the process of unification of former British colonies, followed the British policies related to indigenous peoples. The Constitution Act, 1867 gave the federal government sole responsibility for the affairs of aboriginal peoples, their lands and reserves. The policy of the federal government was based on the assumption that aboriginal peoples were outside of the rest of the society and the state should civilized them. Already in 1868 and 1869 the federal parliament enacted two pieces of legislation concerning only one group of native peoples – Indians that

³⁸ The British colonies on the Atlantic coast: Newfoundland, Nova Scotia, New Brunswick and St. John Island (today Prince Edward Island).

³⁹ See: R. H. Bartlett, *Indian reserves an Aboriginal Lands in Canada: A homeland*, Saskatchewan, 1990.

⁴⁰ See: Royal Commission on Aboriginal Peoples, „The Imposition of a Colonial Relationship,” in *Report of the Royal Commission on Aboriginal Peoples, vol. 1, Looking Forward, Looking Back*, The Commission, Ottawa: 1996; C. Harris, *Making Native Space: Colonisation, resistance and Reserves in British Columbia*, UBC Press, Vancouver, 2002.

imposed many changes on their traditional way of life and their bands⁴¹. These changes especially affected women. A marriage to a non-Indian resulted in losing a status as an Indian. It also made women subservient to their husbands. The 1869 Act and subsequent legislation had a profound impact on generations of aboriginal women⁴².

The provisions of these two pieces of legislation were embodied in the Indian Act of 1876⁴³. This Act has been still in force, although amended many times since its inception. It contains various rights and restrictions applicable to Indians that are registered and regulates the system of reserves. The Indian Act used the legal definition of the term Indian introduced by the previous legislation but it narrowed it down⁴⁴. It emphasised male heredity, so an Indian was a male person of Indian blood, member of the band, his child or a spouse. An Indian women married a non-Indian lost her status. It also further promoted enfranchisement⁴⁵, which became compulsory for an Indian with a profession such as doctor, lawyer or Christian minister. Additionally until 1960 an access to voting rights required renouncing Indian status. The centralized register of Indians that was established in 1951 clarified the criteria for registration. Generally all Indians men who were band members and were living on reserve, kept the status even if they married non-Indian. Still a women who married a non-Indian or if her spouse was enfranchised was not entitled to be registered. The provisions of the Act that excluded women from Indian status were seen as a discriminatory practices, so Indian women challenged this legislation before the Supreme Court of Canada in 1973. Although they won in the Federal Court of Appeal they lost in the Supreme Court of Canada because, as it stated, the discriminatory provisions was not

⁴¹ *An Act providing for the organisation of the Department of the Secretary of State of Canada and for the management of Indian and Ordonnance Lands, S.C. 1868, c.42(31 Vic.); An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act, 31st, Victoria, Chapter 42, S.C. 1869, c. 6.*

⁴² T. Isaac, *Aboriginal Law. Commentary and Analysis*, 4th edition, Saskatoon, 2012, p. 195

⁴³ *The Indian Act, S.C. 1867, c.18.*

⁴⁴ This definition included any person of Indian birth or blood, any person reputed to belong to a particular group of Indians, any person married to an Indian or adopted to an Indian family. The term „Indian” was first defined in *An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada, S.C. 1850, c. 42, 13&14 Vic., s. 5.*

⁴⁵ Enfranchisement means the voluntary revocation of Indian status.

rendered inoperative by the Canadian Bill of Rights⁴⁶. Enacted later, the human rights legislation, and especially the Charter provisions pushed for striking down discriminatory provisions in the Indian Act. Finally in 2011 Indian women gained gender equality in Indian registration process.

The Indian Act regulated almost every aspect of Indians' life, from determining who was an Indian, setting out the rules for governing reserves, through managing lands, resources and education to promoting *enfranchisement*. The general objective of the Act was to assimilate Indians. It was confirmed by the statement of the Canadian Prime Minister John Macdonald (1867–1873; 1878–1891) in 1887 who pointed out that "the he great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion as speedily as they are fit to change"⁴⁷.

The reserves, defined as a tract of land, the legal title to which is vested in the Crown that has been set apart for the use and benefit of a band were under strict federal control⁴⁸. Federally appointed an Indian Agent was the chief administrator in reserves. The amendments of the Act from the late 19th century and to mid-20th century further regulated Indian's affairs. The 1884 revision brought mandated education for Indian children and outlawed traditional Indian ceremonies for instance potlatch of the Pacific Coast and the Sun Dance of the Plains. Assimilationist programs such as residential school system placed additional burden on the fragile aboriginal communities. The government also instituted a pass system to leave the reserves in order to keep communities apart and excluded communities on reserves from the agricultural and industrial economies. Additionally the Canadian government got a power to expropriate parcels of reserve lands, without compensation, for the public utilities.

The reserves system significantly influenced all aspects of aboriginal life. The disruption of traditional networks, marginalization, and discriminatory legislation limited aboriginal peoples to sustain their basic needs. It led to a rapid increase in poverty on reserves that intensified into mid-20th century⁴⁹.

⁴⁶ *A.G. Canada v. Lavell* [1974] S.C.R. 1349.

⁴⁷ R.J. Perr'y, *From Time Immemorial Indigenous People and State Systems*, Austin, 1996, p. 145.

⁴⁸ Crown land indicates a public land.

⁴⁹ See: D. Jenness, *The Indians of Canada*, Ottawa: Minister of Supply and Services Canada, 7th edition 1977, (originally published in 1932).

This policy of isolation, control and enfranchisement of Indians continued through the interwar period. „The objective of government was to continue until there was not a single Indian in Canada that had not been absorbed”, as the deputy minister for Indian Affairs summarized⁵⁰.

After World War II the federal government responding to the human rights pressure and political mobilisation of indigenous people void several intimidating Indians provision of the Indian Act such as compulsory enfranchisement, ban on ceremonies or alcohol sale.

Commenced in 1950s the political activity of various organisations of the aboriginal peoples had profound impact on further relations with the federal, provincial and territorial governments. Gradually aboriginal populations have taken control over their own affairs and started to fight for the recognition of rights and lands. Indigenous affairs were no longer at the margins of Canadian consciousness⁵¹. By 1970s the federal government developed new policies to better address aboriginals claims and rights. Several comprehensive land claims agreement were signed between the federal, provincial, territorial governments and Aboriginal peoples. The aboriginal communities gained greater autonomy with the right to establish self-government.

THE CASE OF MISSING AND MURDERED ABORIGINAL WOMEN

In the last decade several non-governmental organizations in Canada have been trying to raise awareness for the hundreds of missing and murdered aboriginal women. The organisations claimed that government of Canada inappropriately handled the investigation and did not protect indigenous women and girl from violence. This is seen as a violation of the women rights.

The story of homicide epidemic has been ravaging the communities of indigenous peoples for decades. It has been is indicated that the violence is a pervasive in aboriginal communities. Aboriginal women are most likely to be victims of violent crime, including spousal abuse then other women. Twelve out of 33 women bodies found on Pickton’ farm were aboriginal⁵².

⁵⁰ R.J. Perry, *op. cit.*, p. 147.

⁵¹ R.J. Perry, *op.cit.*, p. 152.

⁵² Rober Picton is a convicted killer of women whose bodies were found. In 2007 he was convicted of murder of six women and charged in the deaths of and additional

The Picton affair helped to focus attention on the case of missing and murdered aboriginal women. In 2010 the Vancouver Police Department apologized to the victim's families for the way how the investigation was handled. Then the Missing Women Commission of Inquiry chaired by W. Oppal was established to study the investigation process. In the 2012 Report the Commission primarily concluded that the police investigations into the missing and murdered women were blatant failures which were manifested in recurring patterns of unchecked and uncorrected over several years⁵³. Secondly it drew attention that the higher level of violence in terms of both incidence and severity experienced by aboriginal women is linked to a heightened vulnerability to violence in the communities that they live. As W.T. Oppal suggested that the over-representation of aboriginal peoples in measured indicator of social and physical suffering in Canada is the legacy of colonisation of North America⁵⁴. Similar outcomes were found in the research, published in February 2013 by the Human Rights Watch. This document not only revealed how indigenous women and girls were under-protected by the Royal Canadian Mounted Police but also how some had been the objects of outright police abuse⁵⁵.

Statistic Canada confirms that aboriginal women are disproportionately represented in the number of missing and murdered women in Canada. According to data, police services across Canada reported a total 6,849 homicides involving female victims between 1980 and 2014⁵⁶. Among these victims police identified 1,073 aboriginal women, identities of about 2 percent were unknown. Thus aboriginal females represented 16 percent of female homicide for those years. As aboriginal women constitute 4.3 percent of female population in Canada consequently it means that their propensity of being homicide victim is higher than for non-aboriginal females. The number of homicides of aboriginal females

ones, many of them from Vancouver's Downtown Eastside.

⁵³ *Forsaken: The Report of the Missing Women of Inquiry*, Executive Summary, 2012, <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf> (access – 12.08.2016), p. 160.

⁵⁴ *Ibidem*, p. 15.

⁵⁵ *Those, Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia*, Human Rights Watch, 2013, <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-pol...> (access – 12.08.2016).

⁵⁶ *Homicide in Canada*, 2014, Statistics Canada, <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14244-eng.htm> (access – 12.07. 2016).

has remained stable over past 34 years while non-aboriginals has been declining. Additionally from 2001 to 2014 the average rate of homicides involving aboriginal female victim was 6 times higher than non-aboriginal and the highest rate of homicides was reported in the three territories. As the police reported between 1980 and 2014 more than half of females homicides, regardless the identity were committed by family members.

Furthermore data provided by the Royal Canadian Mounted Police (RCMP) indicated the same phenomenon. The Missing and Murdered Aboriginal Women: A National Operational Overview report that was prepared by the RCMP in 2014 revealed that 1017 aboriginal females were victim of homicide and 164 were missing between 1980 and 2012⁵⁷. Aboriginal females also made up approximately 11.3 percent of the total number of missing females in Canada as of September 2013. The police solved almost 9 of every ten homicides regardless of victim origin. The 2015 RCMP report provided updated statistic and analysis of new cases since 2014 report. It confirmed the trend that missing and murder aboriginal women continue to be overrepresented given their percentage of Canadian population and the violence within family relationship is a key factor in homicides in women. Most women were killed in their homes and communities by men known to them⁵⁸.

The international and Canadian human rights bodies campaigned for a national inquiry into the case of aboriginal women. As M. Rhoad, women right's researcher at Human Rights Watch suggested that Canada owes proper investigation of cases to the hundreds of victims and their families to get to the bottom of the violence that has brought so much suffering to indigenous communities. Clearly, the problem requires the comprehensive, independent scrutiny of an inquiry to determine how to address it⁵⁹. J. Herlt, the director of Human Rights Watch in Canada, centre acknowledged that J. Trudeau⁶⁰ government inherits a number of human rights problems that it will need to be correct and urged the

⁵⁷ The study focus on the 1980-to 2012 to align with the Native Women's Association of Canada study.

⁵⁸ *Missing and Murdered Aboriginal Women.*, 2015 Update to the National Operational Overview, RCMP: reports, Research and Publications, <http://www.rcmp-grc.gc.ca/pubs/abo-aut/mmaw-fada-eng.htm#exec> (access – 10.08.2016).

⁵⁹ M. Rhoad, *Abuse of Canada's Indigenous Woman should be properly investigated*, July, 22, 2016, HRW, <https://www.hrw.org/news/2016/07/22/dispatches-abuse-canada-indigenous-women-should-be-properly-investigated> (access – 23.07.2016).

⁶⁰ Since October 2015 J. Trudeau is a Prime Minister of Canada.

government to launch an inquiry into the murders and disappearance of hundred indigenous women and girls. She indicated the restoring Canada reputation as a global human rights leader should begin with confronting abuses of murders and disappearance of indigenous women⁶¹.

Since the 1960's there were several commission established in Canada to re-examine ill treatment of aboriginal people. In the late 1960's the federal commission led by H.B. Hawthorne concluded that the government had violated the right of indigenous peoples⁶². In 1991 the Report of the Aboriginal Justice Inquiry stated that: Aboriginal women and their children are the victims of racism, of sexism and of unconscionable levels of domestic violence. The justice system has done little to protect them from any of these assaults. The victimization of the aboriginal women accelerated with the introduction of residential schools for aboriginal children. Children were moved from their families and homes at a young age some to return to 10 years, some never return. Aboriginal women traditionally played a prominent role in the consensual decision making process of their communities⁶³.

The most profound analysis of the aboriginal peoples in Canada was prepared by the Royall Commission on Aboriginal People, established in 1991. After five years of investigation it produced five volume, 4000-page final report⁶⁴. The report confirmed once again that the Canadian government asserted control over aboriginal peoples, relocated many reserves from valuable land to worthless one, on many occasions signed dishonest treaties with aboriginals, introduced a pass stem to keep Indians on their reserves, denied Indians the right to participate in political, social and economic life, outlawed spiritual practices and finally separated children from their families by them sending to residential schools. The report also set out 20-year agenda for a change and recommending new legislation and new institutions. The agenda called for the creation of an aboriginal order of government with a legislative body, the expansion of the aboriginal

⁶¹ Canada Human Rights Failure, Human Rights Watch, 27.01,2016, www.hrw.org/news/2016/01/27/canada-human-rights-failures (access – 10.07. 2016).

⁶² Ibidem p.149.

⁶³ A.C. Hamilton, C.M. Sinclair, *The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry*, vol. 1, Winnipeg, 1991, pp. 475–507.

⁶⁴ *Report of the Royal Commission on Aboriginal People*, (1996); <https://qspace.library.queensu.ca/handle/1974/6874> (access – 10.08.2016).

land and resource base and the addressing social, education and housing need of the aboriginals. After twenty years, the implantation of recommendations is still a work in progress but several institutional modifications have been introduced. The most recent, set up in 2007 the Truth and Reconciliation Commission of Canada (TRC) was constituted and created by the Indian Residential Schools Settlement Agreement⁶⁵ to study the impact of the residential school system on Indian students. In the Final Report Honouring the Truth. Reconciling for the Future⁶⁶ the Commission after hearing more than 6000 witnesses revealed that the children were abused, physically and sexually, and even died in the schools. The report included 94 recommendations that not only memorialised the victims but also fostered reconciliation. The commissions 'main goal was to restore justice to the relationship between aboriginal and non-aboriginal people and repair connections. They demonstrated the main source of these troubled relations. The process of reconciliation is still pending.

The former government of Prime Minister Stephen Harper (2006–2015) repeatedly rejected recommendations from international and national human rights bodies to call a public inquiry to study the case of missing and murdered aboriginal women. The government argued that these cases were just criminal cases and they will be addressed accordingly to the procedure. On the 3rd of August 2016, fulfilling an electoral campaign promise the current Prime Minister Justin Trudeau launched a national inquiry into the murder and disappearance of hundreds of missing indigenous women and girl across Canada. As is officially stated it will look into the roost of decades of violence then led to more than thousand dearth and attracted international criticism. Overseen by five commissioner, the inquiry that will run to the end of 2018 and will primary focus to underlying social, economic, cultural, institutional and historical causes of the missing and murdered women.

⁶⁵ *Indian Residential Schools Settlement Agreement*, May 2006, <http://www.residentialschoolsettlement.ca/IRS%20Settlement%20Agreement-%20ENGLISH.pdf> (access – 10.08.2016).

⁶⁶ *Honouring the Truth. Reconciling for the Future. Summary of the Final report of the Truth and Reconciliation Commission*, 2015, http://www.trc.ca/websites/trcinstitution/File/2015/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf (access – 10.08., 2015).

FINAL REMARKS

Today Canada's human rights system, a legal tradition working within a Canadian Charter of Human Rights and related federal and provincial legislation is a fundamental mechanism for ensuring the practical application of Canadians commitment to tolerance and inclusion. Generally, this system works quite well, although there are some concerns related to the lack of government response to the high level of violence indigenous women face.

There is no doubt the human rights of aboriginal peoples were violated in the past. The subsequent migration, warfare, diseases and forced assimilation damaged and in many cases also destroyed the native communities. The problems that women have been facing today are primarily embedded in the troubled past. The roots of aboriginal communities' struggles have been extensively studied for decades. So far the Canadian government set up several commissions to examine the issue. The results have been already spelled out in several reports. The root causes of violence against ingenious peoples are well known.

It seems that the establishment of a similar inquiry will reveal nothing new. The inquiry on missing and murdered aboriginal women might bring some light into the roots of violence but it will be challenging to find a recipe how to halt the abuse. Statistics show that aboriginal man are murdered in greater rate related to general population then even aboriginal women⁶⁷. It means that non only women but all aboriginal communities have been affected by homicide. Today indigenous people in Canada are torn between tradition and modernity. Many communities are plagued by poverty, lack of infrastructure, substance abuses and suicide. Just in April of 2016 five children attempted suicide in one night in the remote norther community in the province of Ontario. The case of mission and murdered women are closely link to the social crisis with its source in the collision between European and aboriginal cultures that the aboriginal communities have been facing for years. It would be better to focus on the whole picture of issues that the aboriginal communities have been facing.

⁶⁷ *Homicide in Canada, op. cit.*

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STRESZCZENIE

Iwona WRÓŃSKA

OCHRONA PRAW CZŁOWIEKA W KANADZIE: KWESTIA ZAGINIONYCH I ZAMORDOWANYCH KOBIET LUDNOŚCI RDZENNEJ

Słowa kluczowe: Kanada, ludność rdzenna, ochrona praw kobiet ludności rdzennej

W Kanadzie system ochrony praw człowieka jest rozbudowany. Chronią go zarówno przepisy prawa międzynarodowego, federalne, jak i prowincji. Generalnie w państwie tym przestrzegane są międzynarodowe standardy ochrony wolności jednostki, o czym świadczą wysokie pozycje w rankingach międzynarodowych. Jednakże brak reakcji rządu Kanady na kwestię zaginionych i zamordowanych kobiet ludności rdzennej został uznany za naruszenie przez Kanadę przyjętych zobowiązań międzynarodowych.

Na tle burzliwych dziejów ludności rdzennej artykuł ten analizuje kwestie naruszenia przez Kanadę zobowiązań międzynarodowych z perspektywy zaginionych i zamordowanych kobiet ludności rdzennej.

SUMMARY

Iwona WRONSKA

HUMAN RIGHTS PROTECTION IN CANADA: CASE OF MISSING AND MURDERED ABORIGINAL WOMEN

Keywords: Canada, Aboriginal people, Aboriginal women rights protection

Canada has a long recognized tradition of individuals' freedom. For years Canada has been viewed as an example to follow in this area internationally. The negligence of the former Canadian government to investigate the case of aboriginal missing and murdered women has been identified as a violation of Canada's obligations under international human rights law.

Considering the turbulent history of indigenous peoples this article examines the issues of breach of Canada's international obligations from the perspective of missing and murdered indigenous women.

NOTA O AUTORZE

Iwona Wrońska – pracownik Instytutu Stosunków Międzynarodowych i Bezpieczeństwa UJK w Kielcach. Stypendystka Pew Foundation w Instytucie Nauk Społecznych i Politycznych Uniwersytetu w Cambridge w Wielkiej Brytanii oraz wykładowca i badacz w Instytucie Nauk Politycznych Uniwersytetu Carleton w Kanadzie. Specjalizuje się w badaniach porównawczych systemów politycznych, w tym systemów ochrony praw człowieka. Jest autorką dwóch monografii i kilkudziesięciu artykułów dotyczących kanadyjskiej polityki.