

Annex 1B — Factual, Legal or Other Errors or Omissions

In reviewing the Report, Canada noted a number of inconsistencies and errors, including with respect to statistical facts, legal obligations or the terminology used to describe the history and rights of Aboriginal people in Canada. While this Annex is not intended to represent a comprehensive listing of all of the errors present in the Report, Canada provides the following examples to support the Committee in undertaking a review of the Report prior to its publication. These errors will be listed by paragraph in the chronological order in which they appear in the Report.

Canada notes that the reference to the failure of police to promptly and thoroughly investigate cases of missing or murdered Aboriginal women in paragraph 3 is at odds with the factual record, which demonstrates an extremely high resolution rate for missing and murdered Aboriginal women, a rate which is virtually the same as that for non-Aboriginal women (close to 90 percent).

Canada notes that the statements made in paragraph 22 do not take into account the fact that reserves resulted from the signing of treaties between governments and Aboriginal communities and would request that this paragraph be revised accordingly.

Canada requests that paragraph 24 be clarified to indicate that only voting rights in relation to the election of reserve band councils were affected by the *Indian Act*. The *Indian Act* does not affect the rights of Indian individuals to vote in federal or provincial/territorial elections. Similarly, the reference should be limited to Indian, and not Aboriginal women, as the *Indian Act* only applies to First Nations women whose Indian status is defined under the Act, and does not have any application for Inuit or Métis women.

Canada requests that a correction be made to paragraphs 27 and 28 to remove references to the territories. Sections 91 and 92 of the *Constitution Act, 1867* do not contain any references to Canada's territories. The federal government has complete exclusive jurisdiction over the territories and while it has delegated some of its powers to the governments of the Northwest Territories and Yukon, these territories have no exclusive jurisdiction.

Canada requests that the following correction be brought to paragraph 28: "Under s. 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." Further, Canada requests that the Committee add the following sentence at the end of paragraph 28: "Aboriginal citizens living off-reserve benefit from the same programs and services as other Canadian citizens."

Canada requests that the Committee correct the statement in paragraph 41 to the effect that the Government of Canada developed the Shelter Enhancement Program that covers off-reserve projects and replace it with the following:

The Canada Mortgage and Housing Corporation provides funding to create new and repair or improve existing shelters for women, children, and youth who are victims of family violence. From 2008 to September 2013, almost 4,357 shelter units/beds for victims of family violence received federal funding, including 299 on-reserve.

Canada also notes that it has provided detailed information concerning the Shelter Enhancement Program and Investment in Affordable Housing in its response to the Committee's follow-up questions, dated January 15, 2014. This suggested revision is drawn from that input.

Canada further requests that the words "and on-reserve" be added at the end of the first sentence in paragraph 43. Canada requests that the following information also be included in this paragraph:

Through AANDC and CMHC, the Government of Canada invests an estimated \$300 million a year to address housing needs on-reserve. Between 2006-2007 and 2012-2013, this annual investment contributed to the construction of about 1,625 new houses and the renovation of 3,000 existing houses. In 2013, CMHC's funding supported: the construction of 546 new units; the renovation of 1,068 existing houses; ongoing subsidy for some 28,800 households living in existing social housing capacity building; and the delivery of 183 capacity development training sessions to First Nations. Ninety percent of CMHC's on-reserve programs and services are delivered by Aboriginal groups. Some \$116 million is also provided annually to support housing needs of Aboriginal households off-reserve.

Canada requests that the Committee delete the last sentence of paragraph 66, as it is inaccurate. The RCMP, as a federal entity, is not subject to provincial statutes for the purposes of serious incident investigations; however, as a matter of policy, and where authorized by provincial statute, the RCMP allows provincial investigation units (where they exist) to investigate RCMP actions resulting in death, serious injury, or sensitive cases (e.g., allegations of sexual assault, corruption). Provincial special investigation units exist in British Columbia, Alberta, and Nova Scotia, and both Manitoba and Quebec are also planning on creating these bodies.

Canada notes that paragraph 71 is imprecise. It should be noted that the paragraph involves two separate and distinct research projects. In February 2013, the RCMP conducted an initial file review of missing and murdered Aboriginal women and girls across RCMP jurisdictions to address the absence of reliable statistics on the exact number of missing and murdered Aboriginal women and girls. Given that ethnicity of a victim was/is not always disclosed or evident, the ability to identify victims as Aboriginal was not definitive for this initial file review. These file reviews were conducted in each RCMP Division (Province) on missing persons dating back to as early as 1940, up to and including February 2013. These reviews indicated that there were 36 cases of missing Aboriginal women where foul play has not been ruled out. These cases were still being actively investigated. File reviews of murdered Aboriginal women, dating back as far as 1932, revealed that 327 homicides occurred and that 98 of these homicides were still under investigation, representing a solve rate of 70 percent. This file review determined that further research was necessary to get a more accurate picture of the prevalence of violence against Aboriginal women in Canada.

After the February 2013 file review, the Commissioner of the RCMP requested a complete operational overview of all cases of missing and murdered Aboriginal women across all Canadian jurisdictions. Further research was conducted in the summer and early fall of 2013 to identify the common risk factors linked to murdered Aboriginal women. The resulting National Operational Review was released in May 2014.

Paragraph 102 incorrectly states that the scope of the Missing Women Commission of Inquiry (MCWI) was limited to the police investigation of the women reported missing on the Downtown Eastside of Vancouver and the decision to stay charges against Robert Pickton in 1998. However the Terms of Reference were later amended to make the process a study commission focusing on broader policy issues and providing flexibility for the Commission to make recommendations about policy reforms related to homicide and missing person investigations more generally across the province of British Columbia.

Paragraph 109 incorrectly states that there is reportedly a lack of consultation and cooperation between the Ministry's Advisory Council on Aboriginal Women (MACAW) and the Government of British Columbia. However, since 2013 steps have been taken to continue to build a strong, respectful relationship and communications between these parties. For example:

- the Ministry of Aboriginal Relations and Reconciliation (MARR) routinely meets with the Council and ensures ministries are engaged as requested. Both the Ministry of Justice (MOJ) and the Ministry of Children and Family Development (MCFD) participated in the MACAW strategic planning day that resulted in the Council's document, entitled "Direction to Government on Taking Action to End Violence against Aboriginal Women in BC";
- MOJ has routinely engaged with MARR and MACAW on initiatives such as the justice reform process, implementation of the MCWI Report and the development of a British Columbia violence-free initiative. MOJ has met with MACAW as a full council and with the Chair personally on a number of occasions. MOJ has also followed up on requests by providing additional information, received feedback and advice from the Council on various actions, and continues to engage MACAW by seeking input and advice;
- the Provincial Office of Domestic Violence has also engaged with MACAW on a number of occasions to help inform the development of the BC Domestic Violence Plan, which resulted in the inclusion of an Aboriginal-specific section within the plan. The Government of British Columbia is committed to working in a coordinated and comprehensive way and as such, MOJ, MARR and MCFD are co-leads on the British Columbia's violence-free agenda; and
- acting on MACAW recommendations from their Taking Action Report, in June 2014, Premier Christy Clark and Aboriginal Relations and Reconciliation Minister John Rustad joined Aboriginal leaders to sign a memorandum of understanding that confirms their shared commitment to end violence against Aboriginal women and girls. MARR, MOJ and MCFD are also co-funding a Secretariat to support the continued work of MACAW and a Joint Aboriginal-Provincial Government MOU Partners Table.

Canada notes that the following statement in paragraph 113 to the effect that in British Columbia “Aboriginal women are at greater risk than non-Aboriginal women of having their children removed by authorities under child protection legislation because of the interpretation of the definition of neglect” is inaccurate and requests that it be deleted and replaced with the statements underlined below. The British Columbia *Child, Family and Community Service Act* does not discriminate against Aboriginal and non-Aboriginal families. Rather, this Act contains provisions to ensure that specific measures are taken to recognize, respect and preserve Aboriginal culture when delivering child welfare services to children and families. In particular, sections 2 and 3 of the Act provide the following guiding principles: the Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations; a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents; kinship ties and a child’s attachment to the extended family should be preserved if possible; the cultural identity of Aboriginal children should be preserved; and Aboriginal people should be involved in the planning and delivery of services to Aboriginal families and their children.

(...) Women who were 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. The experts were also informed by civil society organizations that there are more First Nations children in child welfare care today than at the height of residential schools, by a factor of 3. In British Columbia, Aboriginal children continue to be over-represented in the child welfare system, although initiatives in partnership with the Aboriginal community continue to try to address this issue. Child welfare practice in British Columbia is based on legislation and policies centered on ensuring a child’s safety and well-being. When children cannot safely live with their parents, legislation and policy require that all reasonable efforts be made to place children with relatives and to retain their connection to their own culture and community. The British Columbia *Child, Family and Community Service Act* contains provisions to protect a child’s Aboriginal traditions, kinship and heritage.

Canada notes that the statement, in paragraph 114, to the effect that “removal of children impacts welfare benefits for the parents and makes it almost impossible for them to regain economic independence and so be in a position to reclaim their children” is inaccurate. Measures are in place, for example, in British Columbia to maintain and protect a parent’s economic stability. Further, existing policies allow for full income benefits to remain in place for the duration that the child remains in care in order to support the child’s return home in a timely way; therefore, income benefits are not impacted. Canada requests that paragraph 114 be amended to include the following information, underlined:

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 removal of children can impact welfare benefits for the parents. In British Columbia, the legislative definition of “neglect” in child welfare legislation deems that a child must be physically harmed by neglect to be in need of protection. Economic dependencies are not part of the interpreted scope of neglect in that province. If a child must be taken into care, a Continuing Care Protection Subsidy is sought to maintain financial assistance at the same

level of support to a parent. Provinces and territories have constitutional jurisdiction over all children in their care. There are therefore variations in the interpretation and definition of neglect. Relevant information was provided for each jurisdiction.

Canada also notes that paragraphs 113 and 115 should be revised accordingly.

Canada requests that the statements made at paragraph 124 to the effect that the National Action Plan to Combat Human Trafficking is limited to preventative measures and does not provide for specific measures for protection and assistance to Aboriginal victims and for the detention, investigation and prosecution of offenders be corrected. The RCMP has established a Human Trafficking National Coordination Centre (HTNCC), which works with domestic and international agencies to develop an extensive network of partnerships, including the sharing of intelligence information. The HTNCC provides a focal point for law enforcement in their efforts to combat and disrupt individuals and criminal organizations involved in human trafficking activities. RCMP National Aboriginal Policing and Crime Prevention Services coordinate with the HTNCC to increase awareness among Aboriginal communities. The HTNCC has developed Human Trafficking awareness toolkits for the public, youth and police as well as an e-learning online training resource for police. To date, over 2000 toolkits have been distributed to Aboriginal communities and organizations across Canada. In April 2014, the HTNCC prepared and released the National Threat Assessment on Domestic Human Trafficking for Sexual Exploitation.

The Committee has taken the view, at paragraph 175, that there is a lack of uniform standards regarding victim services. While Canada has varying approaches to the delivery of victim services across the country, given that this matter falls within the jurisdiction of PT governments, efforts have been made to harmonize the recognition of victims' interests, including through the *Canadian Statement of Basic Principles of Justice for Victims of Crime*, signed by FPT Ministers of Justice in 1998, and again in 2003. Furthermore, victim services are continually evolving and improving over time as best practices are developed and greater awareness spreads throughout law enforcement, emergency response and victim services.

The Committee weaves together the concepts of restitution and compensation, at paragraph 180. While both restitution and criminal injuries compensation are mechanisms for providing financial assistance to victims and holding offenders accountable, each is very different. Compensation programs are operated and administered by PT governments. Criminal injuries compensation is offered in nine provinces in Canada and is paid through provincial government revenues. Restitution is part of a sentence that orders the offender to pay the victim for costs that the victim incurred as a result of the offence. Restitution can cover actual financial losses resulting from bodily or psychological harm, or damage to property caused by the crime. It can also cover bodily or psychological harm caused by the arrest or attempted arrest of the offender. The losses must be readily ascertainable.