Canada's ongoing racial discriminating against 163 000 First Nations children and their families

Inter-American Commission on Human Rights

Hearing - 160th Extraordinary Period of Sessions
Human Rights Situation on Indigenous Children in Canada
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HEARING BRIEF

Submitted on November 29, 2016 by:
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First Nations Child and Family Caring Society of Canada

The **First Nations Child and Family Caring Society of Canada** ("Caring Society") is a non-profit organization committed to children's rights, research, and policy analysis and development a on behalf of First Nations agencies that serve the well-being of children, youth and families.

I. Factual Context

First Nations[1] children in Canada are dramatically over-represented amongst children being removed from their families and being placed in child welfare care. Researchers from the Canadian Incidence Study on Child Abuse and Neglect report that First Nations children are 12.4 times more likely to be placed via court order than other children in Canada.[2] The over-representation of First Nations children in care is related to the multi-generational residential school trauma, addictions, poverty, poor housing.[3] **Despite the higher needs of First Nations children, the Government of Canada provides substantially less public services on reserve on reserve and in the Yukon than other Canadians receive from provincial/territorial governments.[4] This includes fewer child welfare services to help First Nations families address the multi-generational harms arising from Canada's over 100 year practice of removing First Nations children and placing them in residential schools for the purposes of assimilation. Furthermore, jurisdictional disputes between and within and between federal and provincial/territorial governments related to a child's First Nations status often cause First Nations children to experience public service delays, disruptions or denials not experienced by other children. In 2007, the House of Commons voted unanimously for a measure called Jordan's Principle[5] which is intended to ensure all First Nations children can access all public services (i.e.: education, health, social services, recreation, etc.) on the same terms as other children without discrimination. The Canadian government failed to properly implement the House of Commons motion and instead applied a narrow definition and bureaucratic approach to Jordan's Principle. The approach was found to be discriminatory by the Canadian Human Rights Tribunal in January of 2016.**

[1] According to the Federal Government definition of Aboriginal peoples in Canada, there are three Aboriginal groups: Inuit, Métis and First Nations.
[2] Trocmé, MacLaurin, Fallon, Knoke, Pitman, & McCormack, 2006
[3] The Truth and Reconciliation Commission of Canada characterized Canada's residential schools as cultural genocide. Residential Schools operated between the 1870's and 1996 in Canada. Over 150,000 indigenous children were removed from their families and placed in distant residential schools that aimed to assimilate them. Thousands of children died and many experienced abuse. The last federally run school closed in 1996.
[4] First Nations Child and Family Caring Society, 2014.
[5] House of Commons Opposition Motion 251

This discrimination dates back to confederation and yet Canada has repeatedly failed to remedy the discrimination despite available solutions and resources.[6] Canada has also failed to comply with three legal orders by the Canadian Human Rights Tribunal to immediately cease its discriminatory provision of First Nations child and family services and to immediately apply the full meaning and scope of Jordan's Principle. Canada has also failed to comply with a House of Commons opposition motion unanimously passed on November 1, 2016 calling on the Government of Canada to comply with the Canadian Human Rights Tribunal orders.

Canada's chronic non-compliance with domestic and international legal obligations to cease discrimination toward First Nations children and their families, coupled with the harmful impacts these dramatic inequalities have for children at a sensitive stage of their development, compelled the Caring Society to bring these matters to the attention of the IACHR. These dramatic and cross-cutting inequities across public services on reserve (and in the case of Jordan's Principle on and off reserve) and in the Yukon compound hardships for First Nations children and their families yielding over-representation in juvenile justice, child welfare, poor health and educational outcomes, high rates of youth suicide and predisposing them for lifelong hardship.[7]

II. Violations of Domestic Human Rights

In 2007, Canada's ongoing discrimination against First Nations children led the Caring Society and the Assembly of First Nations ("AFN") to file a human rights case alleging that Canada's provision of First Nations child and family services and its failure to properly implement Jordan's Principle (a mechanism to ensure First Nations children can access public services on the same terms as other children whereby the government of first contact pays for the child's service and works out any jurisdictional matters later)[8] was discriminatory on the basis of race and national ethnic origin contrary to the *Canadian Human Rights Act.*[9] The Canadian government vigorously fought the human rights complaint trying on eight (8) separate occasions to have it dismissed on technical grounds. Despite Canada's legal tactics, a hearing before the Canadian Human Rights Tribunal ("CHRT" or "Tribunal") relating to the human rights complaint commenced in February of 2013 and concluded in October of 2014.

On January 26, 2016, the CHRT issued its ruling relating to the human rights complaint. It found that the Government of Canada's provision of First Nations Child and Family Services Program ("FNCFS Program") is discriminatory on the basis of race and national ethnic origin contrary to

[6] See for example, Bryce (1922), *A National Crime*; Caldwell (1967), *Indian Residential Schools* ; Sims (1967), *The Education of Indians in Ontario*; Royal Commission on Aboriginal Peoples (1996); Joint National Policy Review on First Nations Child and Family Services (2000); Wen:de Reports (2005); Auditor General of Canada (2008, 2011); Working Group on Child Welfare, (2015) *Report to Canada's Premiers* and the Truth and Reconciliation Commission (2015*) Final Report: the Legacy*.

[7] See for example, UNICEF (2009) *Canadian Supplement to the State of the World's Children*; Canadian Paediatric Society (2015), *Are we doing enough;* Canadian Human Rights Tribunal (2016 CHRT 2) *First Nations Child and Family Caring Society et al. v Attorney General of Canada.* Truth and Reconciliation Commission of Canada (2015) *The Legacy*.

[8] Wen:De Report Three, p. 16.

[9] Section 5 of the *Canadian Human Rights Act* R.S.C., 1985, c. H-6.

section 5 of the *Canadian Human Rights Act*[10] ("CHRA") and international human rights law.[11] The Tribunal noted Canada's repeated failure to take meaningful action to fix the problem despite being aware of the harms to children. In particular, the Tribunal held that Canada's discriminatory conduct "incentivizes" the removal of First Nations children from their families and communities. The Tribunal also found that Canada's failure to implement Jordan's Principle amounts to racial discrimination contrary to the CHRA. The Tribunal ordered the Government of Canada to immediately cease its discriminatory behaviour and outlined a process for determining more specific remedies. The Tribunal's findings and orders are binding under Canadian domestic law.

Although Canada did not seek a judicial review of the decision, it has failed to comply with the CHRT's order. Faced with Canada's non-compliance of its decision and its numerous findings of unlawful discrimination, the CHRT has been forced to issue two further orders in order to compel Canada to cease its discriminatory treatment of First Nations children ("compliance orders"). These two compliance orders of the CHRT include requiring Canada to immediately remediate its discrimination and to provide further information in support of its claim that it has satisfied the immediate relief provisions of its January 2016 decision. In Canada's September 30, 2016 submissions provided in response to the CHRT's compliance orders, Canada admitted that the "immediate relief" provided in its Budget 2016 for child and family services and its funding projections for the next four years were developed BEFORE the CHRT ruled in January of 2016 and have not changed since. Put simply, Canada took no measures to comply with the CHRT's January decision regarding child and family services after it was rendered. Instead, Canada decided on its own what it was prepared to do and not do regardless of what the Tribunal ordered. Canada also fails to account for the special developmental status for children and instead asks for patience as it rolls out its plan to increase First Nations child and family services funding over five years. In effect, Canada is asking to continue to discriminate against First Nations children for an additional five years despite knowing that compound adverse childhood experiences (such as unnecessary removal from families related to lack of prevention services on reserves) impoverish a child's life chances. When pressed, Canada seems to infer that First Nations need to develop capacity before receiving non-discriminatory funding for child welfare services on reserves. It should not be open to Canada to use the results of its discriminatory conduct, namely the under-funding of child and family services on reserves and any service deficits related thereto, to perpetuate its discriminatory conduct.

Regarding Jordan's Principle, the Tribunal's January 2016 order required Canada to immediately cease applying its narrow definition of Jordan's Principle (children with disabilities and complex medical needs) and immediately take measures to apply the full meaning and scope of Jordan's Principle. In subsequent compliance orders, the Tribunal made clear that Jordan's Principle

[10] Section 5 of the *Canadian Human Rights Act* confers a right to non-discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

[11] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs),* 2016 CHRT 2.

applies it to all First Nations children on and off reserve, that it apply it to all jurisdictional disputes, and to ensure that children receive the needed services without procedural delays such as case conferences related to their First Nations status. Contrary to the Tribunal orders, presentations made by Health Canada officials as recently as October of 2016 demonstrate that Canada has narrowed Jordan's Principle by limiting equitable access to public services to First Nations children with critical short term illnesses and disabilities resident on reserve. It has further deployed a bureaucratic review process triggered by the child's First Nations status to determine service eligibility that comes before the child gets the service. Canada claims this narrow definition is in compliance with the CHRT but provides no answer as to why First Nations children are the only group in children than need to have a disability or critical short term illness to receive equitable public services.

Canada's non-compliance is so severe, that on November 1, 2016, the House of Commons of the Parliament of Canada unanimously voted on a motion to spur compliance with the CHRT's orders. In particular, the motion called on Canada to immediately inject $155 millions into its First Nations child welfare program in order to lessen the impact of its discriminatory treatment of First Nations children and their families, to properly implement Jordan's Principle and stop fighting First Nations families in court who are trying to access services for their children. Further, on October 26, 2016, the Manitoba Legislative also passed a unanimous motion condemning the federal government for not complying with the order from the Canadian Human Rights Tribunal.[12] Despite these motions, Canada has still not complied with the CHRT's orders by investing the required resources to remedy its discriminatory treatment of First Nations children. Three days after the motion was filed, Canada was back in court fighting against a mother trying to get $8,000 worth of medical treatment so her teenage daughter could eat and talk without chronic pain. Access to information documents show that Canada has spent at least $32,000 on legal fees fighting the teenager and her mother.

Faced with no other options, the Caring Society, the Assembly of First Nations and other interested parties were forced to take exceptional and further legal action against Canada to enforce the CHRT's January decision and compliance orders by filing various enforcement motions on November 22, 2016. Meanwhile, First Nations children across Canada continue to suffer irritable harm as a result of Canada's racial discrimination.

III. Violations of Rights Guaranteed by the American Convention on Human Rights and International Human Rights Law

(a) Concerns Expressed by International Bodies and Agencies

Numerous international bodies and agencies have already expressed concerns regarding Canada's racially discriminatory conduct against First Nations children and families through its

[12] Both Hansard records are attached to the email submission.

FNCFS Program and its failure to implement Jordan's Principle. These include, by way of example:

- In 2009, UNIFEC expressed concern regarding the underfunding of child welfare services provided to First Nations children in Canada.[13]
- In April 2012, the UN Committee on the Elimination of Racial Discrimination recommended that Canada discontinue the removal of Aboriginal children from their families and it provide sufficient funding for Aboriginal family and child care services. [14]
- In December 2012, the UN Committee on the Rights of the Child expressed concern regarding the "significant overrepresentation of Aboriginal children in out-of-home care" and recommended that Canada "take urgent measures" to address the problem.[15]
- In his 2014 report on the situation of Indigenous Peoples in Canada, the UN Special Rapporteur on the Rights of Indigenous Peoples pointed to Canada's children welfare system as one of the causes for his "significant concern" for the health and well-being of Indigenous Peoples in Canada.[16]
- In August 2015, the UN Human Rights Committee expressed further concern regarding the insufficient funding of child welfare services provided to Indigenous children in Canada. It urged Canada to provide sufficient funding for family and childcare services on reserves.[17]
- In March 2016, the UN Committee on Economic, Social and Cultural Rights expressed concern that the inadequate funding of child welfare service to Indigenous Peoples living on reserve exacerbated the higher likelihood that Indigenous children be placed in childcare institutions. It recommended that Canada increase its funding of child welfare services for Indigenous Peoples. [18]

While the foregoing strongly suggests that Canada is in breach of its international human rights law obligations, the Caring Society respectfully submits that this conduct also amounts to violations of the *American Convention on Human Rights* (the "Convention"), namely Articles 1 (obligation to respect rights), 19 (rights of the child), and 24 (right to equal protection). Its view follows.

(b) Right to Non-Discrimination

The Caring Society submits that Canada's ongoing racial discrimination against First Nations children constitutes a violation of Article II of the *American Declaration of the Rights and Duties*

[13] UNICEF (2009) Canadian Supplement to the State of the World's Children.
[14] UN Committee on the Elimination of Racial Discrimination (CERD), *Consideration of reports submitted by States parties under article 9 of the Convention : concluding observations of the Committee on the Elimination of Racial Discrimination : Canada*, 4 April 2012, CERD/C/CAN/CO/19-20.
[15] UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session, 6 December 2012, CRC/C/CAN/CO/3-4.
[16] Report of the Special Rapporteur on rights of indigenous peoples, James Anaya, *The situation of indigenous peoples in Canada*, 4 July 2014, A/HRC/27/52/Add.2, para. 31.
[17] Human Rights Committee, Concluding observations on the sixth periodic report of Canada CCPR/C/CAN/CO/6, para. 19.
[18] UN Committee on Economic, Social and Cultural Rights, Concluding observations of the sixth periodic report of Canada, 23 March 2016, E/C.12/CAN/CO/6, para 35.

of the Man and Articles 1 and 24 of the *American Convention on Human Rights*. The IACHR has repeatedly stated that non-discrimination is a fundamental principle of the inter-American system of human rights[19] and that the right to equality constitutes the "backbone" of the universal and all regional human rights systems.[20] Non-discrimination on the basis of race in particular was the subject of the first UN 'core' treaty; the *International Convention on the Elimination of All Forms of Racial Discrimination* (''ICERD"). ICERD is now considered a peremptory norm in international law.[21] In light of this, the Caring Society submits that racial discrimination, particularly when it targets children or other particularly vulnerable individuals, must be condemned unequivocally and in the harshest terms.

In addition to the numerous concerns expressed by international treaty bodies regarding its discriminatory treatment of First Nations children, Canada has been found to be engaging in unlawful racial discrimination against First Nations children by its primary domestic human rights mechanism. This finding of a violation of the *Canadian Human Rights Act* against Canada by the CHRT is strongly indicative that Canada is also in breach of its international and regional obligations relating to equality and non-discrimination, including Articles 1 and 24 of the *American Convention on Human Rights*. Indeed, Canada has repeatedly stated internationally that the *Canadian Human Rights Act* is one of the main mechanisms by which it implements its international and regional obligations which flow from the right to non-discrimination and equality.[22] Likewise, according to the CHRT, Canada's domestic human rights obligations mirror its international human rights obligations with regards to First Nations children. It wrote:

> ''Substantive equality and Canada's international obligations require that First Nations children on-reserve be provided child and family services of comparable quality and accessibility as those provided to all Canadians off-reserve, including that they be sufficiently funded to meet the real needs of First Nations children and families and do not perpetuate historical disadvantage.''[23]

In light of this, the Caring Society submits that the CHRT's following findings of racial discrimination under the *Canadian Human Rights Act* also amount to breaches of Articles 1 and 24 of the *American Convention on Human Rights*:

- The design and application of the Directive 20-1 funding formula, which provides funding based on flawed assumptions about children in care and population thresholds

[19] See, IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al*. (United States), July 21, 2011, para. 107. IACHR, Report 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 163; IACHR, Report 67/06, Case 12.476, *Oscar Elías Bicet et al.* (Cuba), October 21, 2006, para. 228; IACHR, *Report on Terrorism and Human Rights*, Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., 22 October 2002, para. 335.

[20] *See, e.g*., International Covenant on Civil and Political Rights (Articles 2 and 26); International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3); European Convention on Human Rights (Article 14); African Charter on Human and People's Rights (Article 2).

[21] Thornberry, P. ''Confronting Racial Discrimination: A CERD Perspective", HRLR (2005) 240

[22] See, for example, Reports by Canada submitted by States parties under article 9 of the Convention, Nineteenth and twentieth periodic reports of States parties due in 2009, January 28, 2011.

[23] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs),* 2016 CHRT 2, para 455

that do not accurately reflect the service needs of many on-reserve communities. This results in inadequate fixed funding for operation (capital costs, multiple offices, cost of living adjustment, staff salaries and benefits, training, legal, remoteness and travel) and prevention costs (primary, secondary and tertiary services to maintain children safely in their family homes), hindering the ability of FNCFS Agencies to provide provincially/territorially mandated child welfare services, let alone culturally appropriate services to First Nations children and families and, providing an incentive to bring children into care because eligible maintenance expenditures are reimbursable at cost.

- The current structure and implementation of the EPFA funding formula perpetuates the incentives to remove children from their homes and incorporates the flawed assumptions of Directive 20-1 in determining funding for operations and prevention, in turn perpetuating the adverse impacts of Directive 20-1 in many on-reserve communities.
- The failure to adjust Directive 20-1 funding levels, since 1995; along with funding levels under the EPFA, since its implementation, to account for inflation/cost of living;
- The application of the *1965 Agreement* in Ontario that has not been updated to ensure on-reserve communities can comply fully with Ontario's *Child and Family Services Act*.
- The failure to coordinate the FNCFS Program and other related provincial/territorial agreements with other federal departments and government programs and services for First Nations on reserve, resulting in service gaps, delays and denials for First Nations children and families
- The narrow definition and inadequate implementation of Jordan's Principle, resulting in service gaps, delays and denials for First Nations children on the basis of their race.

(c) Rights of the Child

The Caring Society further submits that Canada's failure to act in the best interest of First Nations children is a violation of Article 19 of the ACHR which provides that "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

The Inter-American human rights system accords particular importance to the rights of the child. The *American Convention on Human Rights* is the <u>only</u> binding international human rights instrument that prohibits suspension of international obligations related to the human rights of children. It is thus not surprising that the Committee on the Rights of the Child has repeatedly relied upon decisions of the inter-American system in its General Comments.[24] In addition to this, the Committee on the Rights of the Child routinely takes into account decisions adopted by

[24] See Committee on the Rights of the Child, General Comment N° 8, The right of the child to protection against bodily punishment and other forms of cruel and degrading punishment, CRC/C/GC/8, August 21, 2006, para. 24, where the Committee cites the jurisprudence of the Inter-American Court to establish the scope of the state's obligation to adopt positive measures to guarantee the rights of children and adolescents.

the IACHR for protection of human rights in evaluating the situation of children.[25] Conversely, the IACHR refers to the comments issued by the Committee on the Rights of the Child regarding situations existing in OAS member states.[26] In relation to this case, the Committee on the Rights of the Child has stated that:

> "States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 25 and 27 (3) of the Convention."[27]

While the Article 19 calls on States to confer to children "the measures of protection required by his [or her] condition as a minor on the part of his [or her] family, society, and the state", the IACHR has held that this provision should be considered in the context of the broader international and Inter-American human rights system to include the best interest of the child.[28] The best interest of the child was, and remains, a central concern for the CHRT as it is for the IACHR and the Committee on the Rights of the Child. In its January decision, the CHRT wrote:

> "Child welfare services, or child and family services, are services designed to protect children and encourage family stability. The main aim of these services is to safeguard children from abuse and neglect (see Annex, ex. 1 *s.v.* "child welfare"). Hence the **best interest of the child** is a paramount principle in the provision of these services and is a principle recognized in international and Canadian law. This principle is meant to guide and inform decisions that impact all children, including First Nations children."[29]

Although the best interest of the children ought to be central to Canada's FNCFS Program, the CHRT found that the program instead adversely impacts First Nations children. In particular, the CHRT found that the FNCFS Program incentives the removal of First Nations children from their families and communities as a first resort rather than a last result. In particular, the CHRT wrote:

> "[B]y covering maintenance expenses at cost and providing insufficient fixed budgets for prevention, AANDC's funding formulas provide an incentive to remove children from their homes as a first resort rather than as a last resort. For some FNCFS Agencies, especially those under Directive 20-1, their level of funding makes it difficult if not impossible to provide prevention and least disruptive measures. Even under the EPFA, where separate funding is provided for prevention, the formula does not provide adjustments for increasing costs over time for such things as salaries, benefits, capital

[25] Committee on the Rights of the Child, Final Comments regarding the Second Periodic Report presented by El Salvador, CRC/C/OPAC/SLV/CO/1, June 2, 2006, para.12.
[26] IACHR, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, para.363, citing the Committee on the Rights of the Child, Final Comments: Guatemala CRC/C/15/Add.154, July 9, 2001, para. 34.
[27] General comment NO. 11 (2009) Indigenous children and their rights under the Convention, CRC/C/GC/11, 12 February 2009, para 46.
[28] *See, e.g.*, IACHR, Report 62/02, Case 12.285, Merits, *Michael Domingues* (United States), October 22, 2002, paras. 44-45.
[29] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs),* 2016 CHRT 2, para 3.

expenditures, cost of living, and travel. This makes it difficult for FNCFS Agencies to attract and retain staff and, generally, to keep up with provincial requirements. Where the assumptions built into the applicable funding formulas in terms of children in care, families in need and population levels are not reflective of the actual needs of the First Nation community, there is even less of a possibility for FNCFS Agencies to keep pace with provincial operational requirements that may include, along with the items just mentioned, costs for legal or band representation, insurance premiums, and changes to provincial/territorial service standards.[30]

Rather than promoting the best interest of children, Canada's discriminatory conduct has been found to promote negative outcomes for First Nations children and their families. The Caring Society submits that this clearly constitutes a breach of Article 19 of the *Convention.*

(d) IACHR's jurisdiction with respect to Canada

Pursuant to Article 18 of the Statute of the Inter-American Commission on Human Rights, the IACHR has the following powers with respect to the Member states of the Organization of American States:

a. to develop an awareness of human rights among the peoples of the Americas;
b. to make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights;
c. to prepare such studies or reports as it considers advisable for the performance of its duties;
d. to request that the governments of the states provide it with reports on measures they adopt in matters of human rights;
e. to respond to inquiries made by any Member state through the General Secretariat of the Organization on matters related to human rights in the state and, within its possibilities, to provide those states with the advisory services they request;
f. to submit an annual report to the General Assembly of the Organization, in which due account shall be taken of the legal regime applicable to those States Parties to the American Convention on Human Rights and of that system applicable to those that are not Parties;
g. to conduct on-site observations in a state, with the consent or at the invitation of the government in question; and
h. to submit the program-budget of the Commission to the Secretary General, so that he may present it to the General Assembly.

[30] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs),* 2016 CHRT 2, para 344

Furthermore, in addition to those described in the paragraph above, Article 20 also provides that the IACHR has the following powers with regards to OAS Member states that are not party to the American Convention on Human Rights, such as Canada,

a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;
b. to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
c. to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

Canada has thus been subject to the jurisdiction of the Commission since it deposited its instrument of ratification of the OAS Charter on January 8, 1990.[31] Most recently, in 2014, the IACHR published a report examining Missing and Murdered Indigenous Women in British Columbia.

IV. The Caring Society's Request for a Communication

In light of the foregoing, the Caring Society respectfully requests that the IACHR address a communication to Canada including the following calls to action:

1) Urging Canada to implement the decision of the Canadian Human Rights Tribunal in good faith, in consultation with First Nations Peoples and in a manner that promotes and protects the best interest of First Nations children, namely,
    a. To fully implement Jordan's Principle throughout all government departments and in all services provided to First Nations children and their families in ways that ensure First Nations children can access all public services without discrimination;
    b. Undertake immediate measures to relieve the children's suffering by substantially increasing culturally based prevention services intended to keep children safely in their homes and implementing other reforms to relieve the deep inequality in service provision while First Nations and the Government of Canada negotiate a more robust solution.

[31] See, Charter of the Organization of American States, as amended by the Protocol of Buenos Aires (1967), Protocol of Cartagena de Indias (1985), Protocol of Washington (1992), and Protocol of Managua (1993), Arts. 53 (defining the status of the IACHR within the OAS) and 106 (setting forth the IACHR's mandate).

2) Urging Canada to compensate First Nations children and their families who were taken into care from 2006 to today in accordance with the *Canadian Human Rights Act* and principles of international and regional human rights law;
3) Urging Canada to fund and convene a National Advisory Committee on First Nations child welfare to work with the Canadian Human Rights Commission, the Assembly of First Nations and the Caring Society to identify, remedy and implement solutions regarding the discriminatory elements in Canada's provision of FNCFS Program;
4) Urging Canada to fund tri-partite regional tables with representation from the Caring Society and the Assembly of First Nations, and the possibility of participation by First Nations Child and Family Service Agencies to negotiate (not discuss) the implementation of equitable and culturally based funding mechanisms and policies for each region having the benefit of guidance from the National Advisory Committee;
5) Urging Canada, in partnership and consultation with the Assembly of First Nations, the Caring Society and the Canadian Human Rights Commission, to develop an independent expert structure with the authority and mandate to ensure that it maintains non-discriminatory and culturally appropriate First Nations Child and Family Services. This body must also be adequately and sustainably funded by Canada;
6) Urging Canada to immediately stop discrimination in other First Nations children's services such as in education, health, culture and language and basics like water; and
7) The Inter-American Commission on Human Rights to hold a follow-up hearing within one year to determine Canada's compliance with any observations and recommendations the IACHR may make.