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MISSING AND MURDERED: FINDING A SOLUTION TO ADDRESS THE EPIDEMIC OF MISSING AND MURDERED INDIGENOUS WOMEN IN CANADA AND CLASSIFYING IT AS A “CANADIAN GENOCIDE”

Melanie McGruder*

I. Introduction

Native communities across the world are facing a human rights crisis. In Canada, alarming numbers of indigenous¹ women and girls are being murdered or have been missing for a substantial amount of time, with no justice being served. Currently, indigenous women in Canada make up 16% of homicide victims and 11% of missing women, even though they only make up 4.3% of the population.² Inquiries into this epidemic have shown that human rights abuses “historically . . . maintained today by the Canadian state,” have led to indigenous women facing levels of violence that should be classified as a genocide.³

Between 2001 and 2014, the rate of female homicide among indigenous women was four times higher than that for non-indigenous women.⁴ This epidemic continues to rise due to a pattern of racial and gender discrimination that is “designed to displace Indigenous Peoples from their lands, social structure and governance.”⁵ Without proper solutions in place, these historic human rights abuses will continue to worsen. The issue of murdered and missing indigenous women should be considered a “Canadian genocide,” which will require the international community to come together to find a collaborative solution.

This Comment serves a dual purpose. First, it will discuss the history of violence and discrimination against indigenous communities in Canada and

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1. The terms “indigenous” and “aboriginal” are used interchangeably to describe First Nations, Metis, and Inuit peoples in Canada.

2. *MMIWG: Missing and Murdered Indigenous Women and Girls and Ending Violence*, ASSEMBLY OF FIRST NATIONS, <https://www.afn.ca/policy-sectors/mmiwg-end-violence/> (last visited Nov. 21, 2021) [hereinafter *MMIWG*].

3. Merrit Kennedy, ‘Genocide’ Has Been Committed Against Indigenous Women and Girls, *Canadian Panel Says*, NPR (June 3, 2019), <https://www.npr.org/2019/06/03/729258906/genocide-has-been-committed-against-indigenous-women-and-girls-canadian-panel-sa>.

4. *MMIWG*, *supra* note 2.

5. Kennedy, *supra* note 3.

how it has subsequently played a role in missing and murdered indigenous women. Furthermore, it will inquire into actions taken thus far to investigate and understand the epidemic. Second, this Comment will discuss various solutions to address the issue of murdered and missing indigenous women, which should be considered a human rights violation due to the circumstances leading to a substantial amount of indigenous women being murdered in Canada.

Part I broadly introduces the epidemic of murdered and missing indigenous women in Canada. Part II details the history of the indigenous population in Canada. Additionally, Part II discusses the role that sexual violence and human trafficking have played in the rate of murdered and missing indigenous women in Canada. Lastly, Part II outlines the current state of murdered and missing Canadian indigenous women and the initial inquiries that have been put forth to bring attention to this issue. Part III discusses international law and the role that human rights plays in situations like this. Part IV places the problems that Canada is facing within the context of similar problems facing indigenous communities all over the world, indicating that this is developing into a global crisis. Part V highlights legislation that Canada has enacted to protect basic human rights for all Canadian citizens; however, the lack of rights specifically addressed to aboriginal people is apparent. Part VI illustrates the complicated jurisdictional issues facing Canada and how this intersects with tribal interests. Part VII discusses the various solutions that could be put in place to combat this epidemic as well as the ramifications of classifying it as a human rights violation. Lastly, Part VIII summarizes the injustices that indigenous women in Canada are facing and how the international community can collaborate to find a meaningful solution.

II. History

The Canadian aboriginal community has a long and rich history spanning thousands of years. Indigenous communities in Canada have experienced a long uphill battle to secure property, political, and social rights. Along with this extensive record of indigenous people fighting for their rights, there has been a long struggle of sexual violence and human trafficking within the indigenous communities of Canada. Combined, all of these factors have led to a daunting epidemic of murdered and missing indigenous women spreading across Canada.

A. History of the Canadian Indigenous People

According to ancestors, Canadian Native people appeared in the country “at a time when the land was covered in water, and animals were the only living creatures.”⁶ Canada’s indigenous communities are believed to have crossed the Bering Land Bridge that connected Siberia and Alaska approximately “forty thousand . . . years ago.”⁷ Canadian indigenous people developed their own language, learned to create pottery, honed hunting and fishing techniques, and made many other adaptations to live off the glacial terrain.⁸ Their first encounter with European settlers is shrouded in mystery,⁹ however, evidence shows that initial settlers traded fur with the Natives to send back to Europe.¹⁰ When European settlers arrived, native communities in Canada faced the same trials and conflicts presented by European settlement that threatened native communities in the United States.

Similar to the native population in the United States, the Canadian Native population dealt with issues such as reservation development, allotment, and racism, which led to serious socio-economic impacts that are ongoing.¹¹ Eventually, treaties were developed between European settlers and aboriginal Canadian tribes. One consequential royal decree, the Proclamation of 1763, advanced property rights for Canadian tribes.¹² Some argue that the treaty is still valid in Canada since no law has overruled it.¹³ However, while the Proclamation of 1763 did not grant any legal status to indigenous territorial rights, it did recognize that territorial rights exist and can be acquired by treaty.¹⁴

In 1867, Canada was recognized as a federal state and was awarded jurisdiction over indigenous peoples and their land, which was stated in

6. ARTHUR J. RAY, *AN ILLUSTRATED HISTORY OF CANADA’S NATIVE PEOPLE: I HAVE LIVED HERE SINCE THE WORLD BEGAN 2* (4th ed. 2016).

7. *Id.*

8. *Id.* at 5.

9. *Id.* at 46.

10. *Id.* at 46–47.

11. Michael D. Mason, *Canadian and United States Approaches to Indian Sovereignty*, 21 *OSGOODE HALL L.J.* 422, 425, 432 (1983).

12. DAVID H. GETCHES ET AL., *CASES AND MATERIALS ON FEDERAL INDIAN LAW* 98 (7th ed. 2017); *see also* *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543, 549–50 (1823).

13. JOHN L. STECKLEY & BRYAN D. CUMMINS, *FULL CIRCLE: CANADA’S FIRST NATIONS* 122 (2d ed. 2008); *see also* Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, s 25 (U.K.) (later reaffirmed treaty rights).

14. GETCHES ET AL., *supra* note 12, at 1050.

section 91(24) of the Constitution.¹⁵ Just like the United States, with the implementation of the “Indian New Deal” and its termination in the 1950s, Canada was “gradually rediscovering its indigenous peoples.”¹⁶ The Canadian Constitution Act of 1982 refers to indigenous people as “aboriginal peoples of Canada”¹⁷ and recognizes and affirms existing aboriginal rights, but does not define them.¹⁸ However, the Indian Act, which was originally introduced in 1876 and amended in 1985, recognized Indian status.¹⁹ Additionally, through the Indian Act, three distinct indigenous groups have been identified: (1) the First Nations, (2) the Metis, and (3) the Inuit.²⁰ The Indian Act also recognized any other individual who is registered or recognized by treaty as indigenous.²¹ Under the Indian Act, tribes or bands have “one or more ‘reserves’ for their use . . . intended to be an agricultural land base for Indian communities.”²² Through this “variant reserve system,” reserves were established throughout the west coast of Canada.²³ Towns were developed for indigenous fishing posts in such a manner that “British Columbia [had] more reserves than the rest of Canada.”²⁴ These legislative actions are essential to understanding Canadian indigenous peoples’ rights because they highlight the well-established Canadian legislative history of the recognition of aboriginal status.

In addition to initiatives undertaken by the legislature, the Canadian judiciary, particularly the Supreme Court, has also attempted to address injustices against native communities. However, these decisions are just the starting point in an effort to remedy a long history of oppression faced by the indigenous population. One landmark case, *R. v. Sparrow*, attempted to address the rights of the aboriginal people.²⁵ In *Sparrow*, a man was fishing with a net longer than the permitted length, but claimed that he was allowed to do so under an aboriginal right to fish and that the net length requirement is inconsistent with section 35 of the Constitution Act.²⁶ Section 35 requires

15. *Id.*

16. *Id.* at 1051.

17. Generally, aboriginal and indigenous are used interchangeably.

18. Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, at s 35.

19. Indian Act, R.S.C. 1985, c I-5 (Can.).

20. *Id.*

21. *Id.*

22. GETCHES ET AL., *supra* note 12, at 1050.

23. *Id.*

24. *Id.*

25. [1990] 1 S.C.R. 1075 (Can.).

26. *Id.* at 1085.

the Crown to allocate priority of resources through regulation and guarantees that those regulations “treat aboriginal peoples in a way ensuring that their rights are taken serious.”²⁷

In this case, the Court found that, even without the enactment of section 35 of the Constitution Act, the government policy concerning British Columbia fisheries still protects aboriginal rights as it “already dictates that, in allocating the right to take fish, Indian food fishing is to be given priority over the interest of other user groups.”²⁸ This highlights the Court’s efforts to protect aboriginal rights. However, these rights remain hazy and indigenous people themselves have only a miniscule role in the Canadian government.

Following *Sparrow*, in 1997, the Supreme Court of Canada decided *Delgamuukw v. British Columbia*.²⁹ In this case, two hereditary chiefs of the Gitksan and Wet’suwet’en aboriginal tribes brought suit for ownership and jurisdiction over territory that British Columbia claimed they had no right to and no interest in.³⁰ The provincial government argued that even if the Tribes did have such an interest, it should be the Canadian government’s problem, not the province of British Columbia.³¹ The Tribes alleged that their historical use of the territory constituted ownership over the territory.³² They asserted that the erection of “totem poles with the Houses’ crest carved” on them, or other distinctive tribal regalia, established ownership over the territory.³³ Further, the Gitksan Houses practiced “adaawk,” which is a “sacred oral tradition about their ancestors, histories and territories.”³⁴ Similarly, the Wet’suwet’en House practiced “kungax,” a spiritual song or dance tying the tribe to their land.³⁵ Lastly, the “most significant evidence” presented by the tribes was their use of a feast hall (which, until 1951, was illegal in the Criminal Code) to gather and “retell their stories and identify their territories to remind themselves of the sacred connections that they have with their lands.”³⁶

27. *Id.* at 1079.

28. *Id.*

29. [1997] 3 S.C.R. 1010 (Can.).

30. *Id.* at 1011.

31. *Id.* at 1029.

32. *Id.* at 1031.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 1031–32.

The trial court did not give these oral histories any “independent weight” when rendering its opinion; however, the Supreme Court of Canada disagreeing with the trial court, did consider the historical accounts.³⁷ The Court held that the Tribes’ historical traditions and practices on the territory “are relevant to the proof of aboriginal title.”³⁸ Thus, the Court remanded this case and established a precedent that oral histories of aboriginal peoples should be highly persuasive in legal proceedings.³⁹

Delgamuukw highlights the inequality that indigenous people in Canada face in the legal system because “most aboriginal societies ‘did not keep written records. Without this written evidence, a failure by the courts to consider oral histories of the aboriginal peoples would ‘impose an impossible burden of proof’ on aboriginal peoples.”⁴⁰ On the other hand, *Delgamuukw* represents a move in the positive direction in the fight for aboriginal rights because the Court recognized the importance of their oral histories and permitted them to be considered in legal disputes. By being able to use oral history as evidence in legal cases, tribes can “demonstrate that current occupations [have] . . . origins prior to sovereignty.”⁴¹

Lastly, in *Tsilhqot’in Nation v. British Columbia*,⁴² the Court once again addressed land title of aboriginal tribes in Canada. This issue of land title had been “latent until 1983” when bands of the Tsilhqot’in Nation, the Xeni Gwet’in, brought suit to prohibit “commercial logging” on their land.⁴³ Eventually this claim was amended to include aboriginal title rights for all Tsilhqot’in peoples.⁴⁴ The territory in question was a small, “sparsely populated” piece of land with only “200 Tsilhqot’in people liv[ing] there,” along with non-indigenous people.⁴⁵ While the trial court found that the Tsilhqot’in people were entitled to the land, the British Columbia Court of Appeal reversed.⁴⁶ It concluded that the title to the land was not established, but the Tsilhqot’in Tribe still held the rights to hunt, trap, and harvest.⁴⁷ The primary issue in *Tsilhqot’in Nation* was how title land rights are afforded to

37. *Id.* at 1073.

38. *Id.* at 1072.

39. *Id.* at 1060.

40. *Id.* at 1069 (quoting *Simon v. The Queen*, [1985] 2 S.C.R. 387, 408 (Can.)).

41. *Id.* at 1076.

42. [2014] 2 S.C.R. 257 (Can.).

43. *Id.* at 270.

44. *Id.*

45. *Id.* at 271.

46. *Id.* at 319.

47. *Id.* at 271.

semi-nomadic indigenous groups.⁴⁸ The Court devised a three-part test detailing the requirements for aboriginal people to have title to the land, stating that their occupation must be: (1) sufficient, (2) continuous, and (3) exclusive.⁴⁹

First, to be considered sufficient occupation, the Court must look at “Aboriginal culture and practices” and compare them to what is “required at common law to establish title on the basis of occupation.”⁵⁰ Additionally, the Court will examine how the land was used “for hunting, fishing or otherwise exploiting resources . . . which the group exercised effective control at the time of assertion of European sovereignty.”⁵¹ Second, the Court will analyze continuous occupation. The continuity requirement does not demand “evidence of an unbroken chain of continuity”;⁵² rather, “[c]ontinuity simply means that for evidence of present occupation to establish an interference of pre-sovereignty occupation, the present occupation must be rooted in pre-sovereignty times.”⁵³ Lastly, to determine exclusive occupation the Court must determine if the aboriginal group has “the intention and capacity to retain exclusive control.”⁵⁴ This does not mean that the presence of others occupying the land negates exclusivity, but instead, that exclusivity can be established through proof that others were excluded or allowed access to land by claimant group.⁵⁵ Additionally, the Court considers whether permission was granted or refused or if treaties were made as evidence of intention and capacity to control the land.⁵⁶

While determining this test, the Court found that it was important to understand the aboriginal peoples’ way of life and to be culturally sensitive of occupation.⁵⁷ Additionally, the Court determined the procedural duty set in place by the Crown was to analyze whether the aboriginal title was unproven; if so, then there is a duty to consult and accommodate the unproven indigenous interest.⁵⁸ If aboriginal title is established, the Crown must fulfill its procedural duties and comply with section 35 of the Constitution Act, which requires a compelling and substantial governmental

48. *Id.* at 281.

49. *Id.* at 277.

50. *Id.* at 286.

51. *Id.*

52. *Id.* at 284.

53. *Id.*

54. *Id.* at 285.

55. *Id.* at 294.

56. *Id.* at 280–81.

57. *Id.* at 282–83.

58. *Id.* at 295.

objective that is consistent with fiduciary duties owed to aboriginal people.⁵⁹

First, the *Tsilhqot'in Nation* Court held that since aboriginal title was unproven, there was a breach of duty to consult because the Tsilhqot'in held an interest in the land.⁶⁰ Because the province of British Columbia neither consulted nor accommodated the Tsilhqot'in people, it breached the duty owed to them. Secondly, the *Tsilhqot'in Nation* Court found that the Tsilhqot'in did hold aboriginal title over the debated territory.⁶¹

It is important to highlight these cases because they recognize tribal rights in Canada and the sovereignty that indigenous people hold over European settlers in Canada. Furthermore, these court decisions show a step in the right direction by deferring to native people's culture and traditions to determine legal outcomes. Although these decisions are positive steps toward fully recognizing indigenous rights, recognition of the social injustice toward native people in Canada is still lacking.

B. Violence and Sex Trafficking and the Role They Play in Indigenous Communities

In 2014, the Royal Canadian Mounted Police released a report detailing the problem of murdered and missing indigenous women—the first time any data on this subject was produced—stating that this has been a problem since the 1980s⁶² and that “almost 1,200 Indigenous women and girls have gone missing or have been murdered in Canada since 1980.”⁶³ There is a significant probability that these numbers are much higher due to underreporting of violence and crimes against indigenous peoples.⁶⁴ According to the Native Women's Association of Canada (NWAC), “Indigenous women ‘are almost three times more likely to be killed by a stranger than non-aboriginal women.’”⁶⁵ Aboriginal women are more likely

59. *Id.* at 296.

60. *Id.* at 301.

61. *Id.* at 319.

62. ROYAL CANADIAN MOUNTED POLICE, MISSING AND MURDERED ABORIGINAL WOMEN: A NATIONAL OPERATIONAL OVERVIEW 3 (2014), <https://www.rcmp-grc.gc.ca/wam/media/460/original/0cbd8968a049aa0b44d343e76b4a9478.pdf>.

63. Jenna Walsh, *The National Inquiry into the Missing and Murdered Indigenous Women and Girls in Canada: A Probe in Peril*, INDIGENOUS L. BULL., July-Sept. 2017, at 6.

64. *Id.*

65. John G. Hanson & Emeka E. Dim, *Canada's Missing and Murdered Indigenous People and the Imperative for a More Inclusive Perspective*, INT'L INDIGENOUS POL'Y J., Jan. 2019, article 2, at 3, <https://ojs.lib.uwo.ca/index.php/iipj/article/view/7560/6204> (citing

to suffer from poverty, unemployment, or incarceration than non-aboriginal Canadians.⁶⁶ An additional reason for this statistic is sex trafficking; however, even if indigenous women are not victims of sex trafficking, they are still more likely to be victims of violence when compared to non-indigenous women.⁶⁷

Violence in native communities—especially against native women—is nothing new. In Canada, there has been little consideration of the ongoing violence in native communities or the indigenous peoples’ individual perspectives regarding this continuing problem.⁶⁸ For instance, Helen Betty Osborne, an indigenous Canadian woman, was brutally murdered in 1971, and it took “sixteen years for the Crown to sentence one man.”⁶⁹ This man was given life imprisonment but ended up serving only “ten years of . . . [his] term.”⁷⁰ This is just one of many instances of the government overlooking violence against indigenous women and failing to secure them the justice they deserve.

Another danger that indigenous women in Canada are facing is sex trafficking and other sex related crimes. Sex trafficking is the “recruitment and exploitation of an individual” by using “threats, force, coercion, deception, or abuse of power.”⁷¹ Ontario has been identified as a “major hub for sex trafficking, with 75% of Ontario’s cases occurring within the Greater Toronto Area.”⁷² Additionally, according to the *Toronto Star*, a “disproportionate number of Great Lake sex slaves are impoverished First

NATIVE WOMEN’S ASS’N OF CAN., FACT SHEET: MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS (2015)).

66. Jane Gerster, *Aboriginal Women Overrepresented Among Missing, Murdered in Canada; More than 25% of Female Murders Investigated in 2013-14 Were of Aboriginals*, WALL ST. J. (June 19, 2015), <https://www.wsj.com/articles/aboriginal-women-overrepresented-among-missing-murdered-in-canada-1434749914>.

67. *Id.*

68. See Lacy Bateman, *Stories of Violence Against Indigenous Women in Canada: Understanding Helen Betty Osborne’s Story* (July 21, 2015) (M.A. dissertation, Nipissing University) (ProQuest) (telling the story of the murdered Helen Betty Osborne); see also AMNESTY INT’L, AMNESTY INTERNATIONAL REPORT 2020/21: THE STATE OF THE WORLD’S HUMAN RIGHTS 111 (2020), <https://www.amnesty.org/en/wp-content/uploads/2021/06/POL1032022021ENGLISH.pdf>.

69. Bateman, *supra* note 68, at 4.

70. *Id.*

71. Kyla Baird et al., *Sex Trafficking of Women and Girls in a Southern Ontario Region: Police File Review Exploring Victim Characteristics, Trafficking Experiences, and the Intersection with Child Welfare*, 52 CAN. J. BEHAV. SCI. 8, 8 (2020); see also 18 U.S.C. § 1591.

72. *Id.*

Nation women and girls.”⁷³ Sex trafficking between the United States and Canada is rooted in “poverty and discrimination.”⁷⁴ However, most “victims are often reluctant to report crimes,”⁷⁵ thus, it is hard to fully understand the ramifications of sex trafficking and its correlation within the indigenous populations. Instead of addressing the issue of specific exploitation of indigenous women, Canada has merely portrayed the issue as a general problem of “prostitution or sex workers.”⁷⁶

C. Current Issue of Missing and Murdered Indigenous Women in Canada

In 2015, Canada announced its plan for a national inquiry into the crisis of murdered and missing indigenous women.⁷⁷ In Canada, indigenous women comprise only three percent of the total population, but have disappeared and been murdered “at a rate disproportionate to their population.”⁷⁸ Reports have also found that “unlike their non-Indigenous female counterparts, the rate of Indigenous women as homicide victims remained constant throughout the years.”⁷⁹ These reports have actually showed the decline of female homicide in Canada, but the “rate among Aboriginal women remains unchanged from year to year.”⁸⁰ Additionally, one report lists possible reasons for this trend such as “employment status, use of intoxicant, and involvement in the sex trade.”⁸¹ The Royal Canadian Mounted Police found that “12% of Indigenous women victims at the time of the violence were involved in the sex trade compared to 5% of their non-Indigenous counterparts.”⁸²

73. Peter Edwards, *Aboriginal Women Exploited in Great Lakes Sex Trade*, TORONTO STAR (Aug. 24, 2013), https://www.thestar.com/news/crime/2013/08/23/aboriginal_women_exploited_in_great_lakes_sex_trade.html.

74. *Id.*

75. *Id.*

76. *Id.*

77. Kirsten Patrick, *Not Just Justice: Inquiry into Missing and Murdered Aboriginal Women Needs Public Health Input from the Start*, 188 CAN. MED. ASS’N. J. E78 (2016).

78. Lorimer Shenher, *Where Did That Come From? Indigenous Activist Discuss the Creation of Canada’s National Missing and Murdered Indigenous Women Inquiry* (June 2017) (M.A. thesis, Royal Roads University); *see also* Tsilhqot’in Nation v. British Columbia, [2014] 2 S.C.R. 257 (Can.).

79. Kiera E. Royle, *Murdered and Missing Indigenous Women in Canada and Governmental Response* (Mar. 31, 2017) (undergraduate scholarship, University of Windsor).

80. Patrick, *supra* note 77.

81. Royle, *supra* note 79.

82. *Id.* (citing ROYAL CANADIAN MOUNTED POLICE, *supra* note 62, at 17–18).

Robert William Pickton was one of the most prolific serial killers of aboriginal women in Canada.⁸³ During the 1970s, women began to go missing in Vancouver at “an alarming rate” in an area that was “dubbed ‘Canada’s poorest postal code.’”⁸⁴ By the 1990s, about thirty-nine of the “missing women were aboriginal.”⁸⁵ In 1998, only after growing anger due to the lack of police action toward evidence of a serial killer in the area, the Vancouver Police Department finally investigated the disappearances.⁸⁶ Finally, in 2002, the police arrested Pickton after finding evidence on his property linking him to the missing Vancouver women.⁸⁷ He admitted to “torturing and killing 49 women,” most of whom were sex workers or drug users of aboriginal descent.⁸⁸ Pickton was convicted of second-degree murder and sentenced to life in prison.⁸⁹ After Pickton’s conviction, the Lieutenant Governor announced a public inquiry into the handling of these cases, naming Wally Oppal, former Canadian Attorney General, as the commissioner.⁹⁰

The Vancouver’s Missing Women Commission of Inquiry (MWCI) was created to investigate the police inaction in the cases of the murdered women in the poverty stricken area of downtown Vancouver.⁹¹ However, the MWCI proved to be an unwelcoming place for many women who distrusted the legal system.⁹² Sex workers and drug users who were “strategically inculcated as legal outcasts” were suddenly asked to testify about the violence done to them in the presence of those who committed that violence against them “in a space that fundamentally privileged those doers.”⁹³ Consequently, “marginalized” participants began to withdraw “by the dozens” due to their mistrust in the legal system, essentially silencing firsthand accounts.⁹⁴ One solution proposed was to allow anonymous testimony.⁹⁵ Evidence provided by this anonymous method, however,

83. Juliane Collard, *Into the Archive: Vancouver’s Missing Women Commission of Inquiry*, 33 ENV’T & PLAN. D: SOC’Y & SPACE 779, 780 (2015).

84. *Id.* at 781.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 782.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 785.

93. *Id.* at 786.

94. *Id.*

95. *Id.*

“would carry little weight” in determining fault for injustice committed against these women because this type of evidence does not undergo cross-examination or corroboration.⁹⁶ However, for the victims, confidentiality is paramount in these cases due to the legal ramifications of these women’s histories of drug use, sexual abuse, arrests, prostitution, domestic violence, children removed by social service, and even HIV-status.⁹⁷ Thus, without their anonymous testimony deemed valid, finding a meaningful solution to aid in their fight for justice has proven to be an endless battle.

In 2004, the Native Women’s Association of Canada launched the Sisters in Spirit campaign to raise awareness concerning the alarming rates of violence against aboriginal women in Canada.⁹⁸ One of the main goals of the campaign was to increase public knowledge of the “racialized, sexualized violence” committed against aboriginal women, which ultimately led to their disappearance and murder.⁹⁹ Sisters in Spirit is centered on giving aboriginal women voices in a safe space, as compared to other forms that have proven to be less successful, such as the MWCI investigation.¹⁰⁰ Another goal of the campaign is to “empower women” and “force governments, the judiciary and police forces to change [their] attitudes toward Canada’s Aboriginal women.”¹⁰¹

The lack of response from officials regarding the victimization of aboriginal women should be deemed a human rights violation. “When indigenous women are targeted . . . their fundamental human rights are at stake.”¹⁰² Numerous human rights treaties have attempted to address these injustices, including the Inter-American Convention on the Prevention of Punishment and Eradication of Violence Against Women (Convention of

96. *Id.*

97. *Id.*

98. Native Women’s Ass’n of Can., *Aboriginal Women Too Often the Victims of Racialized Sexualized Violence: Sisters In Spirit Initiative Addresses Alarming High Numbers of Missing, Murdered Aboriginal Women in Canada*, CANADIAN WOMEN’S HEALTH NETWORK, Spring/Summer 2007, at 4, 4, <https://www.thefreelibrary.com/Aboriginal+women+too+often+the+victimsof+racialized%2C+sexualized...-a0166093983>.

99. *Id.*

100. *Id.*; see also Collard, *supra* note 83.

101. Native Women’s Ass’n of Can., *supra* note 98.

102. AMNESTY INT’L, *STOLEN SISTERS: A HUMAN RIGHTS RESPONSE TO DISCRIMINATION AND VIOLENCE AGAINST INDIGENOUS WOMEN IN CANADA* 4 (Oct. 2004), <https://www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf> [hereinafter *STOLEN SISTERS*].

Belem do Para).¹⁰³ When it was first introduced, Canada had not ratified the Convention of Belem do Para, which was the “only international human rights treaty dealing specifically with the issue of violence against women” and “would strengthen the legal and institutional framework for protecting Indigenous women in Canada.”¹⁰⁴ This treaty was ratified by Canada in 1994 and defined violence against women.¹⁰⁵ It established that women have the right to live a life free of violence, and any violence committed against women constitutes a violation of human rights and fundamental freedoms.¹⁰⁶ Finally, in 2018—twenty-four years later—the Prime Minister of Canada, Justin Trudeau, announced that Canada intended to become a State Party to the treaty.¹⁰⁷ Thereafter, in 2019, Prime Minister Trudeau’s administration released a report stating that the “widespread killings and disappearances of Indigenous women and girls in Canada is ‘genocide’” for which Canada is responsible.¹⁰⁸ This report came after a “three-year inquiry into murdered and missing Indigenous women . . . [in which] more than 1,500 families of victims . . . testified.”¹⁰⁹ Additionally, in 2019, a report titled “Reclaiming Power and Place” classified the epidemic of murdered and missing indigenous women as a “Canadian genocide.”¹¹⁰ It argues that all calls for justice have fallen on “deaf ears.”¹¹¹

103. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), June 9, 1994, 33 I.L.M. 1534.

104. *STOLEN SISTERS*, *supra* note 102, at 4.

105. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), *supra* note 103.

106. *Id.*

107. *Committee of Experts Celebrates Political Will of Canada To Be Part of the Belém do Pará Convention*, ORG. OF AM. STS., <https://www.oas.org/es/mesecvi/docs/CEVI-ComunicadoCanada-2018-EN.pdf> (last visited Nov. 27, 2021).

108. Ian Austen & Dan Bilefsky, *Canadian Inquiry Calls Killings of Indigenous Women Genocide*, N.Y. TIMES (June 3, 2019), <https://www.nytimes.com/2019/06/03/world/canada/canada-indigenous-genocide.html>.

109. *Id.*

110. NAT’L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS 54 (2019) [hereinafter RECLAIMING POWER AND PLACE].

111. *Id.* at 376.

III. International Law and Human Rights

A. The Role of Human Rights in International Law

To understand the role human rights plays in international law, two key questions must be answered: (1) what is international law and (2) what does it entail? International law encompasses many different areas of law such as contracts, business, and human rights. Generally, international law is defined as rules governing the relationships of nation states, also termed “states,” in the international realm.¹¹² While international law has expanded to incorporate states, it also includes international organizations, substate entities, nonstate actors, multinational corporations, and individuals.¹¹³ There are many sources of international law, but there are two instrumental avenues of international law: treaties and customary international law.¹¹⁴ Treaties are any written international agreement governed by internal or domestic law, which can be bilateral (a treaty between two countries) or multilateral (a treaty between more than two countries).¹¹⁵

Treaties are governed by the Vienna Convention on the Law of Treaties.¹¹⁶ Canada has been a party to the treaty since 1970.¹¹⁷ The Vienna Convention on the Law of Treaties sets forth the rules governing the formation, interpretation, and termination of treaties.¹¹⁸ State parties follow the Convention to maintain peace on a global level.¹¹⁹ Customary international law is made up of rules that are widely accepted among states, but the rules are not binding on a state that declares its dissent as customary international law develops globally.¹²⁰

One main body of international law is the United Nations (U.N.). The U.N. is a governmental body that “can take action on the issues confronting humanity in the twenty-first century.”¹²¹ In 1945, U.N. member states

112. BARRY E. CARTER ET AL., *INTERNATIONAL LAW* 2 (7th ed. 2018).

113. *Id.* at 4.

114. Anomitra Debnath, *Treaties and Customs as a Source of International Law*, LEGAL PEDIA 2, https://www.legalpedia.co.in/article/Treaties%20and%20Customs_Anomitra%20Debnath.pdf (last visited Nov. 21, 2021).

115. *Id.* at 2–3.

116. *Id.* at 3.

117. *Vienna Convention on the Law of Treaties*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXIII/XXIII-I.en.pdf> [<https://perma.cc/U8GW-3K4B>] (last visited Nov. 21, 2021).

118. CARTER ET AL., *supra* note 112, at 98.

119. *Id.* at 128.

120. *Id.* at 123.

121. UNITED NATIONS, <https://www.un.org/en/> (last visited Oct. 7, 2021).

ratified the U.N. Charter—an international treaty that addresses U.N. membership, organs, the general assembly, the security council and other means to maintain peace and security on a global stage.¹²² The U.N. Charter asks parties to register their treaties with the U.N. to avoid secret treaties and to make international policies public, but it is not mandatory for countries to oblige.¹²³

One U.N. treaty that Canada is a party to is the Convention on the Prevention and Punishment of the Crime of Genocide.¹²⁴ According to this treaty, genocide is considered any act committed with “intent to destroy . . . a national, ethnical, racial or religious group” such as “killing members of the group.”¹²⁵ Another important treaty is the Declaration on the Rights of Indigenous Peoples.¹²⁶ Canada “officially removed its objector status” to the declaration “almost a decade after it was adopted by the General Assembly.”¹²⁷ After her election to the Canadian Parliament, Carolyn Bennett “pledged that the new [l]iberal government would implement the UN declaration” in an effort to unite with the indigenous communities of Canada—a sharp contrast to the previous conservative government.¹²⁸ This treaty details how indigenous people “have the rights to life, physical and mental integrity . . . and security of person.”¹²⁹ Additionally, it states that indigenous people “shall not be subjected to any act of genocide or any other act of violence.”¹³⁰

122. *United Nations Charter*, UNITED NATIONS, <https://www.un.org/en/about-us/un-charter> (last visited Oct. 7, 2021).

123. CARTER ET AL., *supra* note 112, at 78.

124. *Human Rights Treaties*, GOV'T OF CAN., <https://www.canada.ca/en/canadian-heritage/services/canada-United-nations-system/treaties.html> (last modified Jan. 25, 2019).

125. G.A. Res. 260 A (III), at art. II(a), Convention on the Prevention and Punishment of the Crime of Genocide (Jan. 12, 1951).

126. G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

127. Tim Fontaine, *Canada Officially Adopts UN Declaration on Rights of Indigenous Peoples*, CBC NEWS (Aug. 2, 2016), <https://www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272>.

128. *Id.*

129. G.A. Res. 61/295, *supra* note 126, at art. 7.

130. *Id.* Canada has also considered several other human rights instruments, including: (1) the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), (2) the International Covenant on Civil and Political Rights (ICCPR), (3) the International Covenant on Economic, Social, and Cultural Rights (ICESCR), (4) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), (5) the Convention on the Rights of the Child (UNCRC), (6) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and (7) the

B. The Domestic Role of International Law

In 1977, Canada passed the Canadian Human Rights Act,¹³¹ which is one of the ways that Canada has worked to implement international treaties in its domestic law.¹³² This Act prohibits discrimination based on “race, religion, and national origin.”¹³³ Furthermore, the Canadian Human Rights Act “broke some new ground, including standards regarding sex, ethnic origin, age, marital status, physical disability, and pardoned conviction.”¹³⁴ Over the years, the Canadian Human Rights Act has expanded to prohibit discrimination based on sexual orientation and gender identity or expression.¹³⁵

This Act was utilized in the landmark case of *First Nations Child & Family Caring Society of Canada v. Canada*, which “engaged” with the previously-established “concept of Jordan’s Principle.”¹³⁶ Jordan’s Principle was named in honor of Jordan River Anderson, a Cree member, who spent years in the hospital while the federal government and the province argued who would pay for his medical treatment.¹³⁷ After his passing, Jordan’s Principle was established “to ensure First Nations children can access ALL public services normally available to other children on the same terms.”¹³⁸ Jordan’s Principle “specifically” addressed medical access to First Nations children; however, to “respect the Canadian Human Rights Act” the petitioner argued that the principle should be “applicable to Inuit and Metis children, as well.”¹³⁹

A lobbying organization—the Missing Women Commission of Inquiry, which organized in 2010—started to inquire into recent homicides across British Columbia, Canada and making recommendations for change in how the government conducts their investigations.¹⁴⁰ Unfortunately, this

Convention on the Prevention and Punishment of the Crime of Genocide (PPCG). *Human Rights Treaties*, *supra* note 124.

131. RECLAIMING POWER AND PLACE, *supra* note 110, at 203; *see also* Canadian Human Rights Act, R.S.C., 1985, c H-6.

132. RECLAIMING POWER AND PLACE, *supra* note 110, at 202.

133. *Id.* at 203.

134. *Id.*

135. *Id.*

136. *Id.* at 206.

137. *Id.*

138. *Id.*

139. *Id.*

140. *About This Commission*, MISSING WOMEN COMM’N OF INQUIRY, <https://missingwomen.library.uvic.ca/index.html> (last visited Nov. 27, 2021).

Commission was officially closed in 2013.¹⁴¹ With the closing of the Commission, a “national commission of inquiry” began throughout Canada.¹⁴² The Native Women’s Association of Canada (NWAC) advocated for murdered and missing indigenous women by “building momentum for . . . [the] anti-violence movement in Canada . . . and [] laying the groundwork for the national inquiry.”¹⁴³ Another key initiative was a 2004 report by Amnesty International, titled *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*.¹⁴⁴ This report has been significant “to raise awareness, and to guide their policy recommendations” by telling the “‘life stories’ of missing and murdered women.”¹⁴⁵

One of the stories that has been “retold in a range of commemorative anti-violence contexts” is the story of Anna Mae Pictou-Aquash.¹⁴⁶ Pictou-Aquash, a thirty-year old woman, participated in the American Indian Movement—an international movement that strived to restore tribal sovereignty and tribal rights—and engaged in renowned protests, such as the 1972 March on Washington, otherwise known as the Trail of Broken Treaties.¹⁴⁷ Pictou-Aquash is believed to have been murdered by another American Indian Movement member who suspected she was an FBI informant.¹⁴⁸ Another story frequently told is that of the murder of Helen Betty Osborne.¹⁴⁹ Osborne, a nineteen year old student, was murdered by four non-Native men who abducted her off the streets in Manitoba.¹⁵⁰ The random nature of her murder has advanced the narrative that “Indigenous women [are] disposable.”¹⁵¹ These stories are just two of thousands of cases involving murdered and missing indigenous women that have received neither the attention nor the justice they deserve. “Understanding how . . . human rights instruments can help promote the rights of Indigenous women” is crucial to address the “crisis of missing and murdered

141. *Id.*

142. ALLISON HARGREAVES, VIOLENCE AGAINST INDIGENOUS WOMEN: LITERATURE, ACTIVISM, RESISTANCE 65 (2017).

143. *Id.* at 66.

144. *Id.*; see also *STOLEN SISTERS*, *supra* note 102.

145. HARGREAVES, *supra* note 142, at 66.

146. *Id.* at 135.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

Indigenous women”¹⁵² to give them the justice they deserve once and for all.

IV. This Epidemic Compared to the Rest of the World

The epidemic of murdered and missing indigenous women is not limited to Canada. Native communities in Australia, Brazil, and the United States are all facing similar circumstances that create a hostile environment for native communities, and little is being done to address this problem. By highlighting that this issue is not isolated in Canada, but instead is an international issue, countries and international organizations can begin to work together to find collaborative solutions.

A. Australia

In Australia, indigenous women “experience domestic violence at significantly higher rates than non-Indigenous Australians.”¹⁵³ In New South Wales, Australia, the rate of “domestic assault[s] against Indigenous women remains over six times higher than the rate . . . against non-Indigenous women.”¹⁵⁴ There are several reasons for the prevalence of violence against indigenous women in Australia. It is important to explore those reasons with a “culturally sensitive understanding of the historical factors which have shaped the experiences of Indigenous Australians.”¹⁵⁵ Similar to those in Canada, the indigenous communities in Australia faced brutal colonization, which inevitably impacted their communities and cultures. In cases where “native populations have suffered violent colonisation or dispossession . . . [they are] disempowered, which has resulted in increased social problems within communities.”¹⁵⁶ The issues facing Indigenous Australians occur at “rates far higher than non-Indigenous Australians, contributing to increased stress within the home,” which leads to unhealthy coping mechanisms, such as violence.¹⁵⁷

These social issues are “consequence[s] of cultural dispossession and trauma, as well as ongoing experiences of discrimination” against

152. RECLAIMING POWER AND PLACE, *supra* note 110, at 182.

153. Emma Buxton-Namisnyk, *Does an Intersectional Understanding of International Human Rights Law Represent the Way Forward in the Prevention and Redress of Domestic Violence Against Indigenous Women in Australia?*, 18 AUSTRALIAN INDIGENOUS L. REV. 119, 120 (2014/2015).

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.* at 121.

indigenous people.¹⁵⁸ Unfortunately, Indigenous Australians do not trust local police or first responders to address domestic violence¹⁵⁹, which is similar to the mistrust Canadian indigenous women living in Toronto have toward their police force. According to the U.N. Special Rapporteur for Violence Against Women, “[i]ndigenous women or women from racially or ethnically marginalized groups may fear State authority” due to the history of “coercive and violent means of criminal enforcement in their communities.”¹⁶⁰ Furthermore, these apprehensions are heightened due to “concerns around police responses to domestic violence in Australia.”¹⁶¹

Even with these bleak statistics, it is still “necessary to encourage the active involvement and participation . . . [for] justice solutions.”¹⁶² Similar to Canada, Australia has adopted U.N. incentives to end this violence against indigenous people. These include enacting the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹⁶³

It is important—especially in today’s climate of police brutality—to highlight the story of Ms Dhu, a twenty-two year old woman who died in police custody.¹⁶⁴ At the time of her arrest, she was sick with pneumonia and had septicemia, which was caused by a broken rib suffered at the hands of her partner.¹⁶⁵ Ms Dhu was arrested for unpaid fines, and when her health began to deteriorate, police “ignored her and belittled her as an addict.”¹⁶⁶ Her condition continued to decline, and “instead of calling an ambulance, [they] handcuffed her unconscious body and dragged her . . . into the . . . police van ‘like a dead kangaroo.’”¹⁶⁷ By the time she received medical attention, Ms Dhu was pronounced dead.¹⁶⁸ This was not the first

158. *Id.*

159. *Id.* at 122.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 126–28.

164. Pauline Klippmark & Karen Crawley, *Justice for Ms Dhu: Accounting for Indigenous Deaths in Custody in Australia*, 27 SOC. & LEGAL STUD. 695, 696 (2017).

165. *Id.*

166. *Id.*

167. *Id.* (quoting Calla Walhquist, *Family Re-live Pain as Ms Dhu Inquest Searches for Answers over Death in Custody*, GUARDIAN (Dec. 4, 2015), <https://www.theguardian.com/australia-news/2015/dec/05/family-re-live-pain-as-ms-dhu-inquest-searches-for-answers-over-death-in-custody>).

168. *Id.*

occasion that an indigenous person perished in the custody of Australian police.¹⁶⁹ For instance, a 1991 Australian report reviewed “99 deaths from 1980-1989.”¹⁷⁰ Since then over 400 more Australian aboriginals have died in police custody.¹⁷¹

Many solutions have been proposed to address the issue of domestic violence in indigenous communities. One solution suggested to reduce violence was the use of Alcohol Management Plans (AMPs).¹⁷² A study was done to analyze the impacts of alcohol restrictions, but the results were inconclusive because it is “not known [] whether assaults against women were . . . reduced and whether there was a corresponding reduction”¹⁷³ due to inaccurate criminal reports. Critics of AMPs argue that, according to the data, violence against indigenous women “remains at intolerable levels.”¹⁷⁴ Thus, the effectiveness of reducing alcohol consumption to prevent violence against indigenous women remains unknown. Regardless of critiques of AMPs, it was “the first comprehensive evaluation . . . with respect to effects on interpersonal violence against Indigenous women.”¹⁷⁵ Even though this study had some drawbacks, it was a step in the right direction for finding solutions to curtail the rise in violence among indigenous women in Australia.

B. Brazil

In Brazil, violence against indigenous women is not only widespread, but the whole population of indigenous communities, regardless of sex, are suffering from prejudiced violence.¹⁷⁶ According to Brazil’s Indigenous Missionary Council, “135 indigenous peoples were killed in 2018,” which was a 23% increase from the previous year.¹⁷⁷ “Violence against indigenous peoples has escalated in Brazil . . . making it one of the most dangerous

169. *Id.* at 697 (describing the death of Aboriginal Elder Mr. Ward, who was “‘cooked to death’ in a van while being transported between prisons”).

170. Zuleyka Zevallos, *Police Violence in Australia*, OTHER SOCIOLOGIST (May 31, 2020), <https://othersociologist.com/2020/05/31/police-violence-in-australia/>.

171. *Id.*

172. Caryn West et al., *Have Alcohol Management Plans Reduced Violence Against Women in Cape York, Australia?*, 24 VIOLENCE AGAINST WOMEN 1658, 1659 (2018).

173. *Id.* at 1660.

174. *Id.* at 1674.

175. *Id.*

176. Clarissa Beretz, *Violence Against Indigenous Peoples Explodes in Brazil*, MONGABAY NEWS (Oct. 17, 2019), <https://news.mongabay.com/2019/10/violence-against-indigenous-peoples-explodes-in-brazil/>.

177. *Id.*

nations . . . for indigenous [people].”¹⁷⁸ Conflicts with indigenous communities in Brazil have been ongoing for the past century, as the indigenous population has faced “physical, psychological and cultural violence.”¹⁷⁹

Critics of the new Brazilian president, Jair Bolsonaro, blame him for the current surge in violence toward indigenous communities.¹⁸⁰ In the first nine months of his presidency, there were “already . . . reports of 160 cases of land invasion, illegal exploitation of natural resources, and damage to property in 153 indigenous territories.”¹⁸¹ Furthermore, in 2019, President Bolsonaro spoke at the U.N. General Assembly to address the Amazonian wildfires that tore through Brazil.¹⁸² He has been accused of purposely starting the fires to clear land for agricultural purposes, which he blamed on the indigenous culture.¹⁸³ Further, President Bolsonaro asserted that “opening land up for mining—rather than expanding land rights for Indigenous people—would translate into economic development for Indigenous communities.”¹⁸⁴ However, indigenous rights advocates continue to condemn Bolsonaro, claiming that he is placing mining interests ahead of indigenous land rights.¹⁸⁵

This clear communication from the Brazilian President is a sign to all Brazilians that the government is putting its interests ahead of these native communities’ wellbeing and encouraging other Brazilians to do the same. The rise in violence in Brazil is contributing to the Brazilian government’s lack of respect for the aboriginal people. In 2019, a twenty-six year-old man “was shot in the head and killed in an ambush” by loggers in the Arariboia Indigenous Reserve.¹⁸⁶ This senseless murder caused an uproar among

178. Karla Mendes, ‘Guardian of the Forest’ Ambushed and Murdered in Brazilian Amazon, MONGABAY (Nov. 2, 2019) <https://news.mongabay.com/2019/11/guardian-of-the-forest-ambushed-and-murdered-in-brazilian-amazon/>.

179. INDIGENOUS MISSIONARY COUNCIL ET AL., JOINT REPORT FOR THE THIRD CYCLE OF ASSESSMENT OF BRAZIL UNDER THE UN’S UNIVERSAL PERIODIC REVIEW MECHANISM: THE HUMAN RIGHTS SITUATION OF INDIGENOUS PEOPLES 4 (Oct. 2016), https://www.upr-info.org/sites/default/files/documents/2017-04/js7_upr27_bra_e_main.pdf.

180. See Beretz, *supra* note 176.

181. *Id.*

182. See Indra Ekmanis et al., *At UN, Bolsonaro’s Nationalist Rhetoric Clashes with Indigenous Leaders*, WORLD (Sept. 24, 2019), <https://www.pri.org/stories/2019-09-24/un-bolsonaro-s-nationalist-rhetoric-clashes-indigenous-leaders>.

183. *Id.*

184. *Id.*

185. *Id.*

186. Mendes, *supra* note 178.

indigenous groups and international non-governmental organizations (NGOs), who labelled it as “authorized genocide.”¹⁸⁷ In 2020, President Bolsonaro continued his push for mining in the Amazon by introducing a bill to Congress that would “eliminate illegal mining by simply legalizing it.”¹⁸⁸ The Bolsonaro administration claims that this new bill would “benefit Indigenous people”; however, there is no indication that the administration even consulted indigenous peoples.¹⁸⁹ This demonstrates the continuing trend of encouraging violence against indigenous communities and a push for decriminalizing certain acts that are known to hurt the native population. Discrimination against the native populations in Brazil is not going to stop unless a change is made within the Brazilian administration.

C. United States

Lastly, indigenous people in the United States have been no exception to this global trend of violence and murder perpetrated against their communities. A report made by the Sovereign Bodies Institute on missing and murdered indigenous women, titled “To’Kee Skuy’ Soo Ney-Wo-Check: I will see you again in a good way,” revealed that there are 2,306 missing women in the United States.¹⁹⁰ Of this number, “over half (58%) are homicide cases, 713 of victims are girls ages 18 and under, and the average victim age is 27 years old.”¹⁹¹ Additionally, “nearly three-quarters of the cases had victims who were living within the foster care system when they went missing,” with a majority of their cases remaining unsolved.¹⁹²

Research has shown that out of “105 cases of missing and murdered Indigenous women . . . 62 percent of cases were never included in any official missing persons database.”¹⁹³ Additionally, in 2016 the National Institute of Justice reported an estimated “1.5 million American Indian and Alaskan Native women have experienced violence, including sexual

187. *Id.*

188. Maria Laura Canineu & Andrea Carvalho, *Bolsonaro’s Plan to Legalize Crimes Against Indigenous Peoples*, HUMAN RIGHTS WATCH (Mar. 1, 2020), <https://www.hrw.org/news/2020/03/01/bolsonaros-plan-legalize-crimes-against-indigenous-peoples>.

189. *Id.*

190. YUROC TRIBAL CT. & SOVEREIGN BODIES INST., TO’KEE SKUY’ SOO NEY-WO-CHEK: I WILL SEE YOU AGAIN IN A GOOD WAY 13 (July 2020).

191. *Id.* at 13–14.

192. Erik Ortiz, *Lack of Awareness, Data Hinders Cases of Missing and Murdered Native American Women*, NBC NEWS (July 30, 2020), <https://www.nbcnews.com/news/us-news/lack-awareness-data-hinders-cases-missing-murdered-native-american-women-n1235233>.

193. *Id.*

abuse.”¹⁹⁴ Furthermore, the United States Department of Justice found that “women on some reservations have been killed at a rate more than 10 times the national average.”¹⁹⁵ However, this number is likely much higher due, in part, to authorities “mistakenly list[ing] the victims as Latina or white.”¹⁹⁶

Recently, positive steps have been taken toward finding justice for the indigenous communities who have suffered from this epidemic. In 2019, President Trump issued Executive Order 13898, which created a task force on murdered and missing American Indians and Alaska Natives—known as Operation Lady Justice.¹⁹⁷ The goals of Lady Justice are to “enhance the operation of the criminal justice system and address the legitimate concerns of American Indian and Alaska Native communities.”¹⁹⁸ Lady Justice introduced new practices to improve law enforcement responses, increase the use of data sharing and database usage, and “establish a multi-disciplinary and multi-jurisdictional team . . . to review cold cases.”¹⁹⁹ One of the most impactful aspects of Lady Justice is that the Department of Justice is working alongside tribal governments, which enables it to understand the “scope and nature of the issues” through consultations.²⁰⁰ Additionally, as of 2020, Savanna’s Act has become law in the United States.²⁰¹ This Act was named after Savanna Greywind, a twenty-two-year-old member of the Spirit Lake Nation.²⁰² Greywind was lured into the house of a neighbor, where she was killed and her unborn baby was cut out from her womb.²⁰³ Savanna’s Act, introduced by U.S. Senator Lisa Murkowski, directs the Department of Justice “to review, revise, and develop law enforcement and justice protocols to address missing and murdered” Native

194. *Id.*

195. *Id.*

196. Kurtis Lee, *Native Women Are Vanishing Across the U.S.: Inside an Aunt’s Desperate Search for Her Niece*, L.A. TIMES (Jan. 31, 2020), <https://www.latimes.com/world-nation/story/2020-01-31/murdered-missing-native-american-women>.

197. *The Presidential Task Force on Missing and Murdered American Indians and Alaska Natives*, OPERATION LADY JUST., <https://operationladyjustice.usdoj.gov/> (last visited Nov. 22, 2021) [hereinafter *Presidential Task Force*].

198. *Executive Order*, OPERATION LADY JUST. (Feb. 23, 2021), <https://operationladyjustice.usdoj.gov/about/executive-order>.

199. *Id.*

200. *Id.*

201. Savanna’s Act, Pub. L. No. 116-165, 134 Stat. 760 (2020).

202. Dan Gunderson, *Fargo Women Gets Life for Killing Pregnant Greywind, Stealing Baby*, MPR NEWS (Feb. 2, 2018), <https://www.mprnews.org/story/2018/02/02/life-for-woman-who-killed-savanna-greywind-stole-baby>.

203. *Id.*

Americans.²⁰⁴ Both the Trump administration and the U.S. Congress have taken many positive steps in addressing the epidemic of murdered and missing indigenous women.

Oklahoma, which has the “sixth-highest number” of missing indigenous women in the United States,²⁰⁵ has proposed a measure to create a “state liaison office to work with tribal and federal law enforcement agencies on missing persons and homicide cases.”²⁰⁶ This new measure—Ida’s Law—is named after Ida Beard, who, at the age of twenty-nine, disappeared from Oklahoma City and has never been found.²⁰⁷ Beard’s family testified at an Oklahoma state legislator committee hearing stating that they “felt ignored by law enforcement or treated as an afterthought.”²⁰⁸ They believe that this issue of missing indigenous women is “bigger than Beard . . . alone.”²⁰⁹ In addition to legislative attempts for justice, “Cherokee Nation officials have paid for billboards along major highways in Tulsa seeking tips and volunteer[s].”²¹⁰ Collectively, these efforts represent a movement among native communities across Oklahoma to search for justice and have their voices heard by legislators and law enforcement agencies alike.

The Lady Justice task force, however, does not have direct authority to review or investigate cases or provide support to victims’ families.²¹¹ Annita Lucchesi, a member of the Cheyenne Tribe who founded the Sovereign Bodies Institute, has called for more than “opening an office.”²¹² Lucchesi believes there needs to be a meeting with victims’ families to truly understand the “systematic racial and economic disparities that foster cycles of violence, poverty and crime” in indigenous communities across America.²¹³ Abby Abinanti, the first Native American woman to be admitted to the California State Bar, believes that attitudes toward indigenous women can be traced back to decades of discrimination and assimilation programs, which severed cultural connections across generations.²¹⁴ Abinanti stated that “a lot of mostly rural communities are struggling to respond with adequate resources, and many don’t have the

204. Savanna’s Act, 134 Stat. at 760.

205. Lee, *supra* note 196.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Presidential Task Force, supra* note 197.

212. Ortiz, *supra* note 192.

213. *Id.*

214. *Id.*

staff with the cultural competency in working with Indigenous communities.”²¹⁵ Many indigenous women believe that they have been silenced and forced to believe that much of what has happened to them over the years is a product of their own doing.²¹⁶

It is important to highlight the epidemic of murdered and missing indigenous women across the globe. In most areas, there are common, historical themes of colonialism, racism, and destruction of cultural identities in native communities. These historical themes have impacted the way native people are treated in the modern era. By understanding that these are global issues, countries can work together to end this epidemic and obtain justice for murdered and missing indigenous women in Canada and all over the world. By collaborating on a global level, countries will show a united front to give native communities the justice they deserve and to end this cycle that dates back to colonization.

V. Current Legislation Set in Place to Combat This Issue

It is pertinent to highlight that Canada has enacted some legislation to protect individuals in Canada. This legislation addresses freedom of religion, anti-discrimination, gender equality and violence against women, hate crimes, national human rights institutions, and human-trafficking. Moreover, this legislation was enacted to protect the general population in Canada. However, it also highlights the need for specific legislation protecting indigenous people’s rights because of the extensive history of discrimination toward indigenous communities. Additionally, there is no existing legislation that addresses criminal acts against the indigenous population.

A. Freedom of Religion

The 1982 Constitution Act of Canada lists the guarantee of rights and freedoms granted by the Canadian Charter of Rights and Freedom.²¹⁷ The Canadian Charter of Rights and Freedom “guarantees the right and freedoms . . . to such reasonable limits . . . justified in a free and democratic

215. *Id.*

216. *Id.*

217. Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, foreword (U.K.); *see also* OFF. OF RELIGIOUS FREEDOM, THE IMPORTANCE OF RELIGIOUS FREEDOM (n.d.), https://www.legislationline.org/download/id/5770/file/Canada_Importance_religious_freedom_fact_sheet-eng.pdf.

society.”²¹⁸ The Constitution Act of Canada goes on to list the fundamental freedoms guaranteed to Canadian citizens. This includes “freedom of conscience and religion” and “freedom of thought, belief, opinion and expression.”²¹⁹ Lastly, the Constitution Act of Canada lists equality rights guaranteed by the Act. For instance, “[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination . . . based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”²²⁰

B. Anti-Discrimination

In 2014, Canada amended the Canadian Human Rights Act, which was originally passed in 1985.²²¹ The purpose of the Canadian Human Rights Act is to extend:

[T]he principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have . . . without being hindered in or prevent from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability.²²²

The Canadian Human Rights Act clarifies that the Canadian government is still committed to the “protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada” that was recognized in section 35 of the Constitution Act of 1982.²²³ However, this is all that is mentioned in the Constitution Act of 1982 regarding aboriginal people in Canada. In 2014, Canadian legislature also amended the Canadian Multiculturalism Act of 1985.²²⁴ This Act is important because it specifically addresses the aboriginal peoples of Canada in its preamble.²²⁵ The Canadian Multiculturalism Act “provides that every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination.”²²⁶ This Act specifically “recognizes rights of

218. Canadian Charter of Rights and Freedoms, s 1, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.).

219. *Id.*

220. *Id.*

221. Canadian Human Rights Act, R.S.C., 1985, c H-6.

222. *Id.* at c H-6, s 2.

223. *Id.* at c 30, s 1.2.

224. Canadian Multiculturalism Act, R.S.C. 1985 (4th Supp.).

225. *Id.* at c 24, pmbl.

226. *Id.*

the aboriginal peoples of Canada.”²²⁷ The Canadian Multiculturalism Act stressed the “understanding that multiculturalism reflects the cultural and racial diversity of Canadian society,” and the role that indigenous communities play in Canada’s cultural and social landscape.²²⁸

C. Gender Equality, Violence Against Women, and Domestic Violence

When it comes to criminal procedure, it is important to understand that Canada is a civil law and common law legal system.²²⁹ The origin of civil law can be traced back to the Roman Empire, with Germany and France being two of the largest civil law countries in modern times.²³⁰ Civil law focuses on codification, which creates a uniform system of codes that address criminal or civil procedures.²³¹ In contrast, common law, which is used in the United States’ legal system, focuses on case law or judge-made law.²³² With common law, lawyers are trained to avoid generalizations and come up with patterns and structures based on facts from previous court cases.²³³ Thus, in Canada’s legal system, lawyers rely on criminal codes as well as previous court decisions as precedent. In the context of criminal punishment for violence committed against women, Canada created a criminal code specifying punishments for “sexual offences, public morals and disorderly conduct.”²³⁴ In addition to the Canadian Criminal Code addressing sexual offenses, Canada also implemented the Canadian Charter of Rights of Freedoms.²³⁵ The Charter further emphasizes “everyone[‘s] . . . right to life, liberty and security of the person,” including insulation from fear of harm to your person.²³⁶

227. *Id.*

228. *Id.* at c 24, s 3(1)(a)–(b).

229. *Where Our Legal System Comes From*, GOV’T OF CAN., <https://www.justice.gc.ca/eng/csj-sjc/just/03.html> (last modified Sept. 9, 2021).

230. See MARY A. GLENDON ET AL., *COMPARATIVE LEGAL TRADITIONS: TEXT, MATERIALS AND CASES ON WESTERN LAW* 65–66, 73–82 (4th ed. 2014); see also MATHIAS SIEMS, *COMPARATIVE LAW* 43 (2014) (“With respect to civil law, French and German law are said to have influenced all countries regarded as civil law countries today . . .”).

231. *Id.* at 73–76.

232. SIEMS, *supra* note 230, at 46 (“[S]ince previous cases are regarded as binding precedent, judges apply law made by themselves.”).

233. *Id.*

234. Part V of the Criminal Code, R.S.C., 1985, c C-46 (Can.).

235. Canadian Charter of Rights and Freedom, s 1, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act 1982, c 11 (U.K.).

236. *Id.* s 7.

D. Hate Crimes

Canada's criminal code includes a provision for hate crimes. However, most of the hate crimes listed in the criminal code, focus exclusively on "communicating statements of crime" rather than a physical action manifested by hate.²³⁷ This gap in the criminal code received criticism across Canada, especially in the aftermath of the George Floyd murder in Minnesota.²³⁸ In Canada, the death of George Floyd "has shone a light on police brutality against Black and Indigenous people in Canada."²³⁹ Additionally, with COVID-19 running rampant throughout the world, there has "been a spike in attacks against Asian-Canadians" throughout the country.²⁴⁰ Avvy Go, a critic of hate crime prosecutions in Canada, says, "There's a lot of issues as to how seriously our criminal justice system sees hate crimes" and "[w]hat is even more disheartening . . . is that a lot of these cases are not even investigated as hate crimes."²⁴¹ There is significant oversight in the legislation and legal systems regarding hate crimes committed in Canada. Without properly codifying hate crimes—exclusive of hate speech—the infractions committed against indigenous people based on their affiliation with the native communities will go unnoticed.

E. National Human Rights Institutions

In addition to the Canadian Human Rights Act of 1985,²⁴² the province of Alberta passed the Alberta Human Rights Act of 2000.²⁴³ The Act of 2000 addresses the "inherent dignity and the equal and inalienable rights of all persons . . . of freedom, justice and peace in the world."²⁴⁴ Furthermore, the Act acknowledges the ethnic makeup of Alberta by stating that "all Albertans should share in an awareness and appreciation of the diverse racial and cultural composition of society . . . whereby those equality rights and that diversity may be protected."²⁴⁵ This highlights the positive steps are being taken on both a national and individual provincial level to

237. Part VIII of the Criminal Code, c C-46, s 319(1).

238. Jason Proctor, *The Difficult History of Prosecuting Hate in Canada*, CBC NEWS (Jun. 13, 2020), <https://www.cbc.ca/news/canada/british-columbia/racists-attacks-court-hate-crimes-1.5604912>.

239. *Id.*

240. *Id.*

241. *Id.*

242. Canadian Human Rights Act, R.S.C., 1985, c H-6.

243. Alberta Human Rights Act, R.S.A., c A-25.5.

244. *Id.*

245. *Id.*

recognize equality in society and to appreciate the diversity of Canada's population.

F. Trafficking in Human Beings

Canada also codified its stance on human trafficking within its borders.²⁴⁶ In the Canadian criminal code, Canada's legislation included criminal offenses for kidnapping, trafficking in person, hostage taking and abduction.²⁴⁷ In addition to legislation, the Canadian Department of Justice created the National Strategy to Combat Human Trafficking (National Strategy).²⁴⁸ "[The] *National Strategy* will strengthen Canada's response to human trafficking and support broader Government of Canada commitments, including preventing and addressing gender-based violence, and supporting the safety and security of Indigenous peoples."²⁴⁹ Due to "historic and ongoing gendered discrimination [toward Indigenous women] . . . which in turn has made them more vulnerable to different kinds of violence" Indigenous women have been placed in "situations of exploitation and human trafficking."²⁵⁰ However, because of initiatives taken by the legislature and other institutions in Canada, the government is beginning to recognize the injustices that native communities face and is beginning to take steps to address this epidemic.

VI. Question of Jurisdictional Issues?

Canada is split into multiple provinces. This can present a unique jurisdictional issue regarding whether criminal offenses are prosecuted by the regional province or the federal government of Canada.²⁵¹ Like the United States, Canada's government is set up with separation of powers, through judicial, executive, and legislative branches.²⁵² In Canada, "[e]ach province and territory has its own courts," with "[t]he Supreme Court of

246. *Canadian Legislation*, GOV'T OF CAN., <https://www.justice.gc.ca/eng/cj-jp/tp/legis-loi.html> (last modified July 7, 2021).

247. Part VIII of the Criminal Code, R.S.C., 1985, c C-46, s 279, 279.01, 279.1, 280.

248. GOV'T OF CAN., NATIONAL STRATEGY TO COMBAT HUMAN TRAFFICKING 2019-2024 (2019).

249. *Id.* at 3.

250. Arina Roudometkina & Kim Wakeford, *Trafficking of Indigenous Women and Girls in Canada*, NATIVE WOMEN'S ASS'N. OF CAN. (June 15, 2018), <https://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR10002955/br-external/NativeWomensAssociationOfCanada-e.pdf>.

251. *See* DEP'T OF JUST. CAN., CANADA'S COURT SYSTEM 1-7 (2015), <https://canada.justice.gc.ca/eng/csj-sjc/ccs-ajc/pdf/courten.pdf>.

252. *Id.* at 1.

Canada presid[ing] over the entire system.”²⁵³ Canada has four federal court systems within the larger system. First, there are provincial and territorial courts that handle “most cases that come into the system.”²⁵⁴ Second, the provincial and territorial superior courts, which have plenary power vested through “section 96 of the Constitution Act, 1867” and which are tasked with handling more serious crimes, such as murder.²⁵⁵ Third, there are provincial and territorial courts of appeal and the Federal Court of Appeal.²⁵⁶ Lastly, the final appellate court in Canada is the Supreme Court of Canada.²⁵⁷

“The federal court system runs parallel to the provincial and territorial court systems.”²⁵⁸ Canada’s parliament determined the disputes that are assigned to federal jurisdiction, such as claims against the government, review of decisions from federal tribunals, immigration, and refugee matters.²⁵⁹ The Constitution Act of 1867 lists both the powers of the federal government and the powers of the provinces.²⁶⁰ The provinces’ powers include taxation, hospitals, prisons, education, marriage and property, and civil rights.²⁶¹ Additionally, the Constitution Act of 1867 states that the federal and provincial governments hold dual “power over agriculture and immigration.”²⁶²

Unlike in the United States, where there have long been jurisdictional battles between the tribal, state, and federal courts, in Canada, the government has “both exclusive and broad” jurisdiction over tribes.²⁶³ Under section 91(24) of the Constitution Act of 1867, the “exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the classes of subjects . . . [over] Indians, and lands reserved

253. *Id.*

254. *Id.* at 3.

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.* at 8.

259. *Id.*

260. *Our Country, Our Parliament: The Division of Powers*, PARLIAMENT OF CAN., https://lop.parl.ca/about/parliament/education/ourcountryourparliament/html_booklet/division-powers-e.html (last visited Sept. 19, 2021).

261. *Id.*

262. *Id.*

263. *American Indian Tribes and Canadian First Nations: The Impact of Gaming Law and Policy on the Industry*, ABA (Sept. 20, 2016), https://www.americanbar.org/groups/business_law/publications/blt/2016/09/04_rand/.

for the Indians.”²⁶⁴ Thus, criminal jurisdiction in Canada is exclusively federal, and native groups, including First Nations, do not have any jurisdiction over crimes committed on their land.²⁶⁵

Additionally, under section 35 of the Constitution Act of 1982, “existing aboriginal and treaty rights of Indian, Inuit, and Metis peoples are recognized and affirmed.”²⁶⁶ Furthermore, the Supreme Court of Canada historically found aboriginal rights to “include a range of cultural, social, political, and economic rights, including land rights, hunting and fishing rights, and the right to practice one’s own culture.”²⁶⁷ However, the Supreme Court of Canada did not “include any aboriginal rights that had been extinguished by the federal government prior to 1982.”²⁶⁸ The fact that native communities do not have criminal jurisdiction over crimes committed against them on their land highlights the total reliance that native communities have on the Canadian government to aid them in their fight against the injustices against their communities. Canadian tribes are at the mercy of the federal government to address these injustices. With a change in jurisdictional authority, tribal governments could regain power and ensure justice gets served.

VII. Solutions

The epidemic of murdered and missing indigenous women is a substantial issue; therefore, no single solution is sufficient and there needs to be a collaborative process to aid all Canadian indigenous communities. One solution is a greater inclusion of native communities in higher education, giving indigenous people the opportunity to enter the legal field. As lawyers, they would have the ability and the duty to advance the law in ways that help communities that are not in positions of power. Additionally, hate crimes in Canada are hard to define within the legal system; therefore, an emphasis on codification could aid in prosecuting those who murder or injure native people. Lastly, in the international realm, stricter monitoring and classification of this epidemic as a human rights violation may put pressure on Canada to vigorously prosecute those who have committed crimes against native communities. It is crucial that these changes are

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*; see also *R. v. Sparrow*, [1990] 1 S.C.R. 1075 (Can.).

implemented to combat the issues that native communities are facing in Canada.

A. Native Americans in the Legal Landscape

One solution to combat the Canadian epidemic of murdered and missing indigenous women is to create better channels for indigenous members to enter into the legal profession. Currently, “[t]he relationship between the Native People of Canada and the legal system has received far too little attention.”²⁶⁹ At an early age, native children face an uphill battle for basic primary education due to their remote geographical locations.²⁷⁰ For example, in Ontario, “[m]any aboriginal students face barriers in becoming equipped to enter law school when they are in remote communities” prohibiting such students from continuing their education.²⁷¹ The lack of affordable and available transportation for indigenous students to travel farther distances for school is also a barrier to those students pursuing higher education or professional school, such as law school.²⁷² Furthermore, in native communities, “[t]he likelihood of knowing a lawyer socially or having one as a relative is quite small when there is only . . . a handful of Indian lawyers in all of Canada.”²⁷³ Tribes in Canada have “frequently been seriously disadvantaged through poor negotiations and contracts with either Provincial or Federal governments or with private interests.”²⁷⁴ If there was a greater push for native members to have access to higher education and mentorship opportunities, they could help not only themselves, but others in their community.

In the United States, the few native American students attending law school are still experiencing discrimination. In 2020, The Center for Women in Law and the National Association for Law Placement Foundation released “Women of Color – A Study of Law Student Experiences.”²⁷⁵ While this study focused on “Asian/Pacific Islander,

269. Bradford W. Morse, *Native People and Legal Services in Canada*, 22 MCGILL L.J. 504, 504 (1976).

270. See Alex Robinson, *More Aboriginal Students Needed in Ontario Law Schools: Academics*, LAW TIMES (May 23, 2016), <https://www.lawtimesnews.com/news/general/more-aboriginal-students-needed-in-ontario-law-schools-academics/262142>.

271. *Id.*

272. See *id.*

273. Morse, *supra* note 269, at 517.

274. *Id.*

275. Angelique EagleWoman, *Native Women Law Students Excluded from So-Called “Women of Color in Law Schools” Study*, INDIAN COUNTRY TODAY (Jun. 26, 2020),

Black/African-American and Hispanic women/Latinas,”²⁷⁶ the study omitted statistics for “Native American/American Indian/Alaskan Native women” from the study.²⁷⁷ This lack of inclusion in a study designed to increase “inclusion” further highlights the ways in which indigenous women are consistently “marginalized, invisible and regularly excluded.”²⁷⁸

Native American women feel their voices are not heard because not only are they women of color, but also because they are “political beings with the status of citizenship/membership in Tribal Nations in a government-to-government relationship with the United States.”²⁷⁹ Furthermore, Native American women “often experience isolation and depression in dealing with the lack of understanding, course offerings or representation of . . . legal issues in law school curricula” that represent native needs.²⁸⁰ There are many obstacles native women face when entering the legal profession. However, entering the legal profession is even more difficult when legal institutions do not acknowledge the existence, struggles, and difficult journey that Native women, as women of color, face when entering the legal profession. Studies that attempt to emphasize minority struggles, but instead ignore one of the most marginalized societies, is something that needs to change. These studies need to practice due diligence to represent all minorities that attend law school.

The coronavirus pandemic forced society to adapt and learn to be connected virtually through online communication. This experience can serve the dual purpose of protecting people while also connecting native students to educational institutions that traditionally would be too far away for students to attend in person. Creating online programs and connecting through streaming services, such as Zoom, could be a way for students to continue their education and inspire them to attend law school. Additionally, if law schools in Canada offered more online courses, not only would students be able to cut down on the cost of travel, but they might also save money by staying at home, taking care of their families, and not having to dedicate extra resources to pay rent or other law-school-related living expenses.

<https://indiancountrytoday.com/opinion/native-women-law-students-excluded-from-so-called-women-of-color-in-law-schools-study>.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

If there were an increase in Native American lawyers, judges, and other legal professionals, the amount of murdered and missing indigenous people, especially women, would likely decrease. By having lawyers and judges who share the same background and understanding of the victims, there may be an incentive to pursue these cases more rigorously. Additionally, natives who are victims of sex trafficking or other crimes may be more comfortable in sharing their story and more willing to prosecute if they feel they have a support system that fully understands them and will fight for their rights.

B. Prosecuting Crimes Committed Against Indigenous Communities

A huge obstacle that stands in the way of prosecuting defendants is the lack of data collection by the Canadian government. According to Amnesty International, there needs to be a call for “systematic, publicly available data on the Aboriginal identity of both the victims and perpetrators of violence.”²⁸¹ Amnesty International believes that this “data can be crucial to better understand and eliminate violence.”²⁸² If there were “comprehensive and accurate reporting” on missing and murdered indigenous women, positive steps could be taken to “understand and address violence against women.”²⁸³ As recently as 2014, the Royal Canadian Mounted Police released their “*first* national report” on missing and murdered indigenous women and girls.²⁸⁴ This step was important, but it was insufficient. Amnesty International expressed concern about the “incomplete reporting” of the data and believes that the “true extent of the violence faced by Indigenous women and girls remains unknown.”²⁸⁵ By collecting and keeping accurate data on the crimes that are committed against the indigenous communities in Canada, the Canadian government acknowledges that there is a problem. If governments do not keep accurate statistics, the epidemic of murdered and missing issues facing Canadian indigenous women are easily overshadowed because the public does not know that this is something happening in their own backyard. If Canada

281. *New Statistics on Violence Against Aboriginal People Released*, AMNESTY INT’L BLOG (Nov. 6, 2015), <https://www.amnesty.ca/blog/new-statistics-violence-against-aboriginal-people-released/>.

282. *Id.*

283. *Missing and Murdered Indigenous Women and Girls: Every Life Should Matter*, AMNESTY INT’L BLOG (June 19, 2015), <https://www.amnesty.ca/blog/no-more-stolen-sisters/missing-and-murdered-indigenous-women-and-girls-every-life-should-matter/>.

284. *Id.* (emphasis added).

285. *Id.*

released an annual report with the rising numbers of women found murdered or reported missing, awareness would continue to keep attention on the issue. Publishing this data could aid in pushing these women's stories to the top of political and legal so that prosecutors might finally charge the perpetrators of these crimes.

In addition to accurate data reporting, law enforcement plays an important role in prosecuting defendants who commit crimes against the indigenous communities in Canada. Currently, “[t]he failure of law enforcement authorities to deal effectively with the problem of missing and murdered indigenous women and girls in Canada is just one element of the dysfunctional relationship between the Canadian police and Indigenous communities.”²⁸⁶ Law enforcement in Canada “need[s] to understand the specific needs of Indigenous communities, be able to communicate with Indigenous people without barriers of fear and mistrust, and ultimately be accountable to Indigenous communities.”²⁸⁷ With this lack of understanding by the Canadian law enforcement, victims might find it difficult to speak out about their experience due to their fear that nothing will come of it. Furthermore, indigenous people have historically attempted to report that their loved ones have gone missing, but police failed to launch an extensive investigation for a majority of these cases. Passing legislation that would require the Royal Canadian Mounted Police to receive special training to deal with indigenous communities and to fully understand their customs and background could provide better and more complete investigations of murdered and missing indigenous women. Another solution could be to have tribal members accompany Canadian law enforcement officials during their investigations to make tribal members feel more comfortable with the process. By passing legislation that requires increased investigation training and evidence collecting, prosecutors will develop more comprehensive and solid cases to bring justice for the indigenous female victims.

Another obstacle in prosecuting crimes against indigenous women comes from the lack of a definition for hate crimes in Canada. According to Canada's Department of Justice, “the central problem in the classification and recording of hate crimes is the issue of definition.”²⁸⁸ When the

286. *Those Who Take Us Away*, HUM. RTS. WATCH (Feb. 12, 2013), <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>.

287. STOLEN SISTERS, *supra* note 102, at 17.

288. Julian V. Roberts, *Disproportionate Harm: Hate Crime in Canada* 6 (Dep't of Just. Can., Working Paper No. WD1995-11e, 1995), https://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/wd95_11-dt95_11/wd95_11.pdf.

definition of a hate crime is “highly variable,” it “will generate inconsistency in statistics purporting to measure the activity.”²⁸⁹ Moreover, different jurisdictions in Canada have different definitions of what constitutes a hate crime.²⁹⁰ If there were a “standard definition of a hate or bias crime” across all Canadian jurisdictions, better “statistics [could] be collected in a systematic way.”²⁹¹ However, developing a solid definition of what constitutes a hate crime can be somewhat tricky. If the definition of a hate crime becomes too general, there will likely be a “larger number[] of hate crimes recorded by the police across Canada.”²⁹² As a result, this could result in overcharging people and not focusing on the issue at hand—the epidemic that is inflicted on indigenous women. On the other hand, if the definition is “overly restrictive,” then “almost no crime is committed solely for one reason or another.”²⁹³ Regardless of the pros and cons of which type of definition to use, it is crucial to create a uniform definition that applies across Canada, “or else hate crime statistics will present a distorted picture.”²⁹⁴ With a uniform definition of hate crime, legislation could push to increase sentencing for hate crimes, because prosecutors can clearly define which crimes fall into that category. A better definition of a hate crime and harsher sentencing for perpetrators of hate crimes may serve as a deterrent to those committing crimes against the indigenous community in Canada.

C. Increasing International Monitoring

Lastly, an increase of international monitoring will push indigenous women’s stories forward and pressure Canada to act. The United Nation’s Universal Declaration of Human Rights, adopted in 1948, develops international human rights law.²⁹⁵ One of the fundamental goals of the United Nations is to “support[] human rights . . . in providing accountability for serious violations of humanitarian law and gross human rights violations.”²⁹⁶ Addressing human rights violations “through the rule of law strengthens peace and security and development.”²⁹⁷

289. *Id.*

290. *Id.*

291. *Id.* at 9.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Human Rights Law*, UNITED NATIONS, <https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/human-rights-law/> (last visited Sept. 21, 2021).

296. *Id.*

297. *Id.*

Human rights are “not granted by any state” but defined as “universal rights” that are “inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.”²⁹⁸ The range of fundamental human rights goes from “right to life,” to other rights such as “rights to food, education, work, health, and liberty.”²⁹⁹ Currently, Canada has ratified seven of the nine major U.N. human rights treaties.³⁰⁰ According to the United Nations Human Rights, Office of the High Commissioner, when a country has ratified one of the core human rights treaties, the “[s]tates have obligations and duties under international law to respect, protect and fulfill human rights.”³⁰¹ This means the states have an “obligation to . . . refrain from interfering with or curtailing the enjoyment of human rights.”³⁰² Second, the states have an “obligation . . . to protect individuals and groups against human rights abuses.”³⁰³ Lastly, the states have an “obligation to . . . take positive action to facilitate the enjoyment of basic human rights.”³⁰⁴

The epidemic of murdered and missing women plaguing the Canadian indigenous community can and should be considered a human rights violation. Furthermore, this attack on indigenous women is a human rights violation that is happening in Canada’s backyard with a lack of justice being served by the Canadian government. Canada has an obligation to prevent human rights violations, which is evidenced by its international treaties. However, Canada fails to provide basic human rights to the indigenous community by not taking steps to end the epidemic of murdered and missing indigenous women once and for all. Canada must respect the indigenous communities’ human rights, meaning that they must not interfere with the enjoyment of human rights.

Canadian law enforcement has not respected the indigenous communities because they have interfered with the enjoyment of their human rights. For instance, historically, indigenous women have been discriminated against

298. *What Are Human Rights?*, UNITED NATIONS HUMAN RTS. OFF. HIGH COMM’R, <https://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx> (last visited Sept. 21, 2021).

299. *Id.*

300. *Reports on United Nations Human Rights Treaties*, GOV’T OF CAN., <https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system/reports-united-nations-treaties.html> (last modified Dec. 23, 2020); see also *Human Rights Law*, *supra* note 295.

301. *Human Rights Law*, *supra* note 295.

302. *Id.*

303. *Id.*

304. *Id.*

by law enforcement. Canada has the duty to protect individuals and groups against human rights abuses. With the surge of murdered and missing women in Canada, it is apparent that Canadian law enforcement and the legal system fail to protect indigenous rights. A majority of the cases demonstrate an inadequate investigation due to the Canadian law enforcement's erroneous belief that it is a runaway situation or something of victims' own volition, as opposed to foul play.³⁰⁵

Lastly, Canada has an obligation to take affirmative steps to protect the indigenous communities' basic human rights. Even though some steps have been taken, it has not been enough because there is still a trend of indigenous women found murdered or gone missing each year. Therefore, it is clear that this epidemic of murdered and missing indigenous women should be considered a human rights violation. Further, the United Nation's Office of the High Commissioner should increase its monitoring and look at imposing sanctions to incentivize Canada to take even more steps to protect the indigenous community. There are already international watchdogs, such as International Amnesty; however, if Canada received even more pressure from the United Nations and international groups that monitor human rights violations, these pressures may push Canada to finally take the step to put precautions in place to protect the indigenous community and push prosecutors to help bring justice for the victims.

This problem within the Canadian indigenous community is not going to go away on its own. Canada needs to take positive steps and put safeguards in place to begin to address these issues. There will never be one solution that will fix all, but, by collaborating together and working toward a common goal, the faceless and voiceless victims of this epidemic will finally be seen and heard.

VIII. Conclusion

The current epidemic of murdered and missing indigenous women in Canada should be considered a human rights violation, for which Canada needs to create proper solutions to address. The history of the Canadian indigenous communities' interaction with the European settlers was turbulent. Tribes in Canada created treaties and statutes with settlers, developing indigenous peoples' legal statuses within the newly forming country. In conjunction with statutes and treaties, major court cases

305. *Indigenous Women's Group Say Police Too Quick to Label Missing Girls as Runaways*, CTV NEWS (Aug. 26, 2020), <https://www.ctvnews.ca/canada/indigenous-women-s-group-says-police-too-quick-to-label-missing-girls-as-runaways-1.5079963>.

developed that provided property rights to indigenous people in Canada. The recognition of indigenous rights in Canada was a step in the right direction; however, there is still a lack of recognition for the criminal violations against the indigenous people.

There are several systematic reasons that this epidemic has developed to the level it has in Canada. One of these reasons is domestic violence and human trafficking issues within indigenous communities. In major cities, such as Toronto, indigenous women tend to live in poverty, creating a hunting ground for human trafficking. Due to discrimination, victims are less likely to discuss these crimes with the police because they do not feel comfortable speaking on their issues. Unless there is change, the true ramifications of sex trafficking and reporting will never be known. The lack of accurate reporting affects the murdered and missing indigenous women epidemic that is ongoing in Canada. Studies show that indigenous women are murdered or gone missing at an alarming rate, especially when compared to non-indigenous women. MWCI tried to push Canadian police to investigate this epidemic. However, due to the lack of trust in the legal system by indigenous women, it is difficult to get women to speak about what is happening to them and others in their community. Campaigns, such as Sisters in Spirit, attempt to raise awareness of this violence committed against indigenous women. Sisters in Spirit highlighted the fact that there is no safe space for women and there are no procedures in place to protect these women.

This epidemic should be considered an international human rights violation against the indigenous women in Canada. There are two main sources of international law—treaties and customary international law—that comprise human rights. The U.N. dictates the development of treaties and already set forth multiple human rights treaties. On the domestic front, Canada passed human rights legislation to address issues facing the indigenous community. Advocacy groups push for more investigation into murdered and missing women. Even though some steps have been taken, there still needs to be affirmative action to put this issue at the top of the political and legal agendas and catapult it to international attention. Canada is not the only country facing issues of missing and murdered women; indigenous communities in Australia, Brazil, and the United States are as well. It is important to recognize that this is not something that is solely happening in Canada. This is an international problem that the international community needs to be made aware of. Global awareness will lead to collaborative solutions on an international scale, hopefully yielding effective results.

It is important to highlight that there is some current legislation set in place in Canada that addresses freedom of religion, anti-discrimination, gender equality/violence against women and domestic violence, hate crime, national human rights institutions, and trafficking in human beings. However, Canada has complicated jurisdictional issues with all criminal jurisdiction falling under the Canadian federal government, leading to Canadian indigenous people having even less agency to address the violence plaguing their communities.

Even though one solution will not fit all situations, it is important to begin to work toward a solution to provide justice to indigenous women in Canada. One of these solutions would be to provide better access to legal education for indigenous populations to be able to provide proper legal advice to their community and begin to build a trusting relationship between legal institutions and indigenous communities. Furthermore, lawyers have the opportunity to make a change; by giving indigenous people that voice and opportunity, justice may finally be served. Second, with proper data collection, this issue could be catapulted into national attention by highlighting the astounding number of native women who are found murdered or have gone missing in Canada. Lastly, increasing international monitoring and imposing sanctions on Canada for human rights violations should be considered. Clear definitions of human rights violations are developed by the Officer of the Higher Commissioner, which Canada has not met. By creating more pressure and monitoring this issue in Canada, it will force Canada to begin to seriously address the issue that is happening to its citizens.

The road ahead in Canada is not going to be an easy one, but it is important for all the stories of victims of these crimes to finally be heard and seen. Justice is something that is not easy to achieve, especially when you are already facing an uphill battle. It is time to break those barriers and fight for what is important: human rights.