

# Missing and Murdered Aboriginal Women and Girls

## - A Three-Part Webinar Series

### ***Webinar 1:*** **Violence against Women and the Due Diligence Standard**

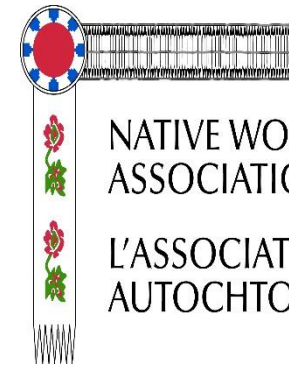
#### ***Speakers***

**Dawn Harvard**

President, Native Women's Association of Canada

**Shelagh Day**

Chair, Human Rights Committee, Canadian Feminist Alliance for International Action



# The 2015 IACHR and CEDAW Reports: Building on a History of UN Findings

- ***August 2015 (and April 2006):*** UN Human Rights Committee Concluding Observations
- ***March 2015: UN CEDAW report***
- ***January 2015: IACHR report***
- ***May 2014:*** UN Special Rapporteur on the Rights of Indigenous Peoples mission report
- ***June 2013:*** UN Human Rights Council Universal Periodic Review report
- ***December 2012:*** UN Committee on the Rights of the Child Concluding Observations
- ***June 2012:*** UN Committee against Torture Concluding Observations
- ***April 2012:*** UN Committee on the Elimination of Racial Discrimination Concluding Observations
- ***November 2009:*** UN CEDAW Concluding Observations



# FAFIA Website

[www.fafia-afai.org/en/solidarity-campaign/](http://www.fafia-afai.org/en/solidarity-campaign/)

# Webinar Series Overview – Session 1

1. Why NWAC and FAFIA approached CEDAW and the IACHR:
  - How do the CEDAW and IACHR inquiry processes work?
  - The BC Missing Women's Commission of Inquiry
2. The international human rights law on violence against women:
  - How is a woman's right to live free from violence understood as a human right?
3. IACHR Report and the Due Diligence Standard

# Coming Up in the Series

## ***Webinar Two***

- IACHR report findings
- CEDAW report findings
- What are the regional and international legal obligations of the Government of Canada?

## ***Webinar Three***

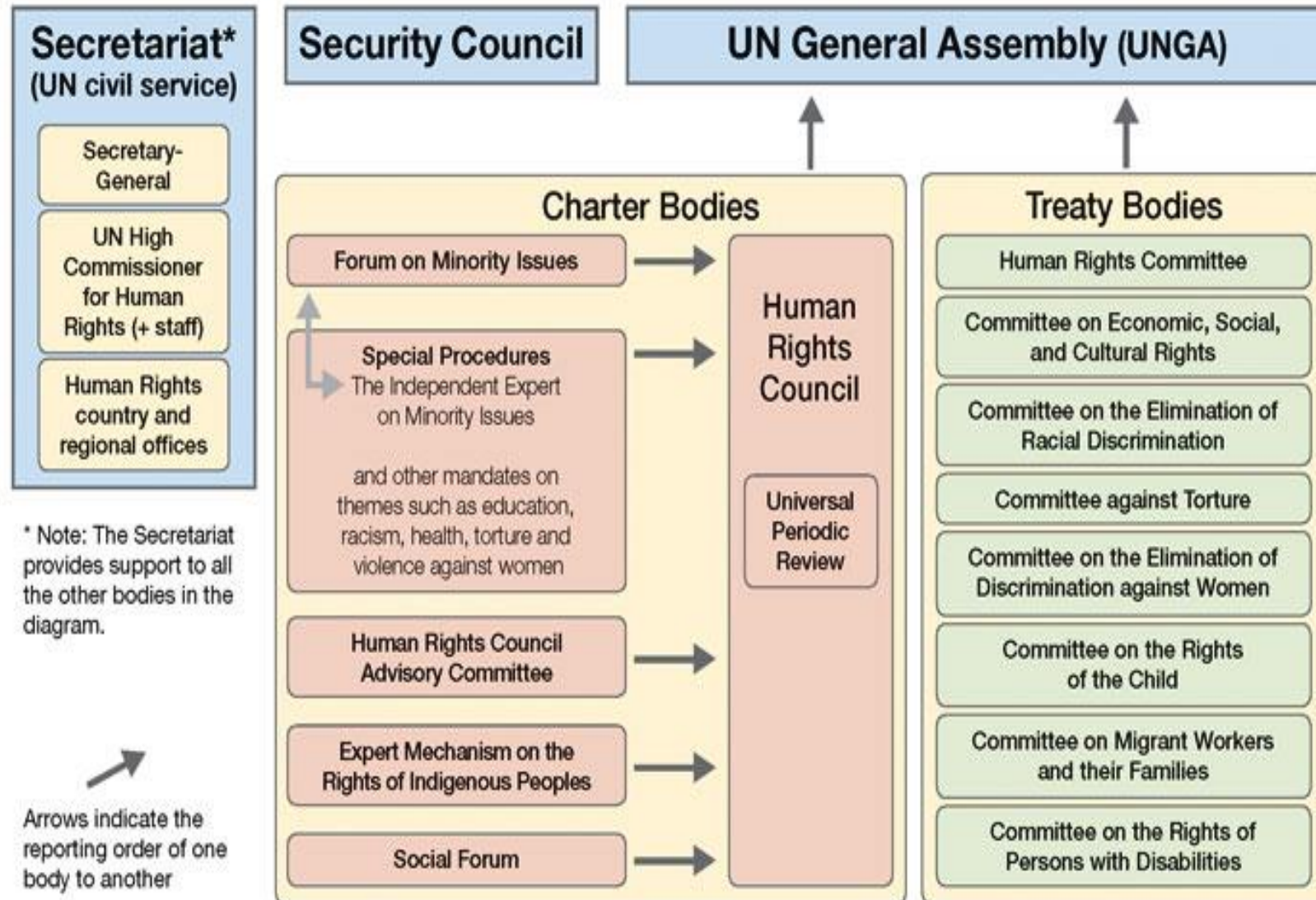
- Where are we now?
  - What about a national inquiry?
  - What about a second national roundtable?
  - What about follow-up by IACHR and CEDAW Committee?
  - Who is doing what in Canada? What can we do?

# Why NWAC and FAFIA approached CEDAW and the IACHR



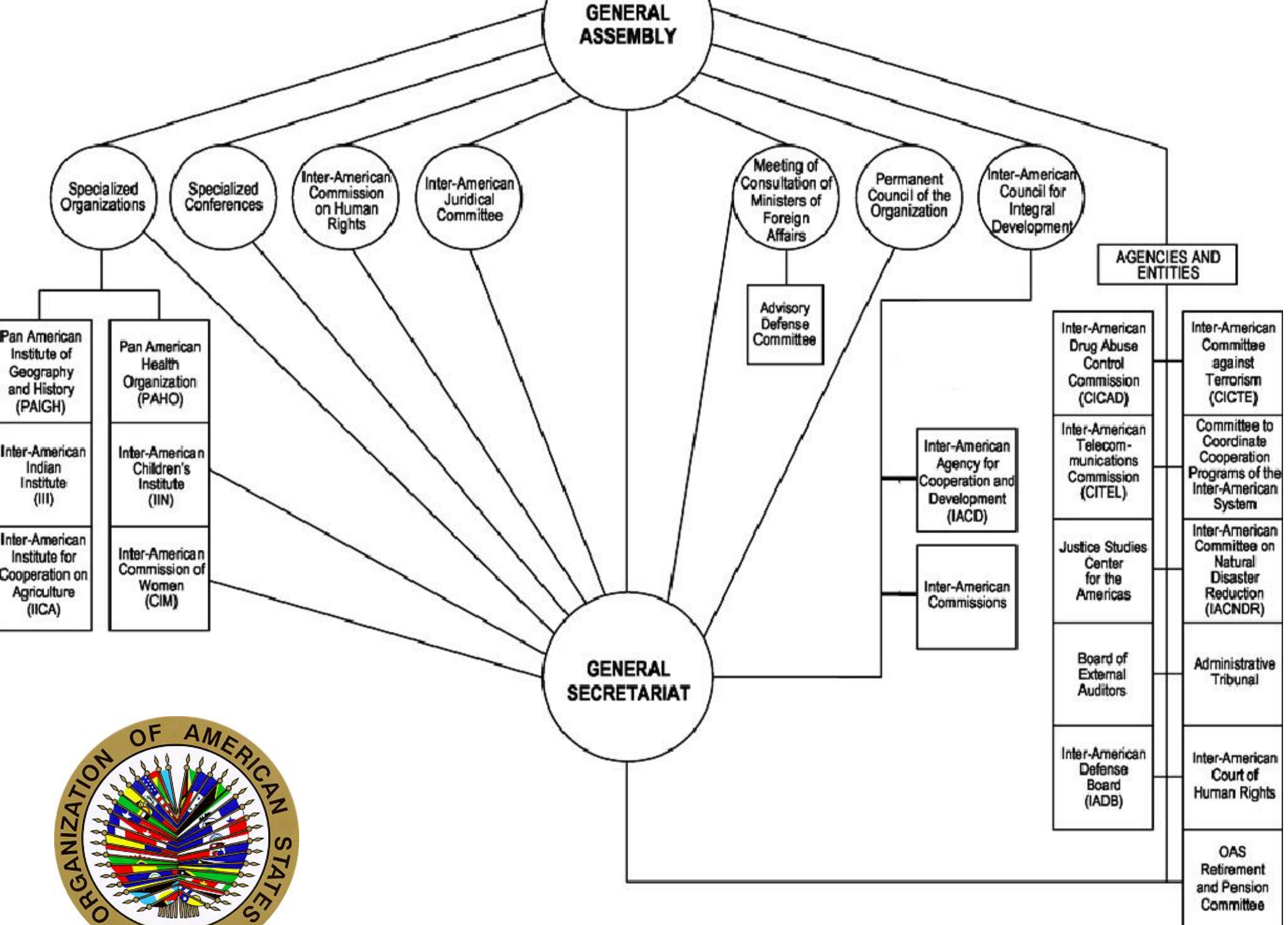
# Structure of the UN Human Rights Bodies and Mechanisms

Note: This diagram is not exhaustive. It highlights the major human rights bodies and mechanisms which are covered in this training.



Minority rights group online learning, online: <https://www.minorityrightscourse.org/mod/page/view.php?id=1626>





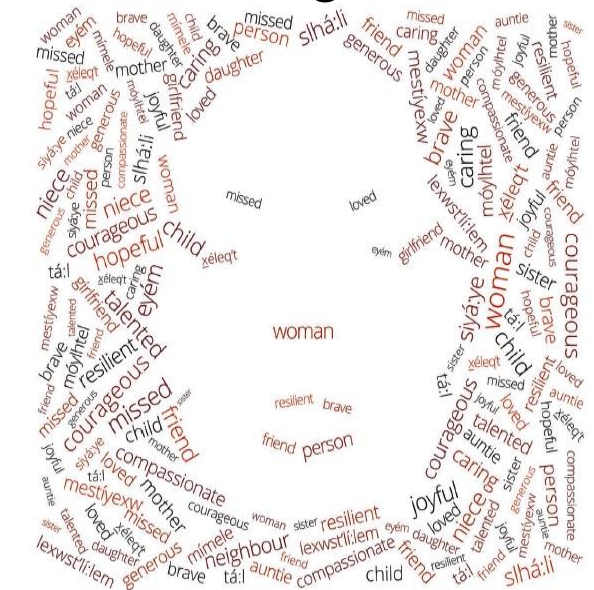


# CEDAW Timeline: NWAC & FAFIA Engagement

- **2000:** OP-CEDAW enters into force, allows for individual complaints under Article 8
- **2002:** Canada ratifies OP-CEDAW
- **2008:** CEDAW periodic review of Canada, NWAC & FAFIA advocate on MMIW
- **2011:** NWAC & FAFIA make formal requests to CEDAW Committee to initiate an inquiry under Article 8
- **2012:** CEDAW Committee agrees to undertake an inquiry; requests permission to visit Canada to conduct inquiry
- **2013:** Two members of the CEDAW Committee visit Canada to conduct inquiry
- **2015:** CEDAW Committee report released

# IACHR: NWAC & FAFIA Engagement

- **2012:** NWAC & FAFIA participate in an IACHR thematic briefing  
IACHR requests to visit Canada to conduct investigation
- **2013:** NWAC & FAFIA participate in 2nd IACHR thematic briefing  
IACHR granted permission to conduct an investigation  
Conducts investigation in August
- **2015:** Report released



# FORSAKEN

The Report of the Missing Women Commission of Inquiry  
Executive Summary

The Honourable Wally T. Oppal, QC  
Commissioner

# IACHR Proceedings





# IACHR Proceedings



# Recap: Why NWAC and FAFIA approached CEDAW and the IACHR

- Human rights framework
- To focus on the legal responsibilities and obligations of Canadian governments
- Accessibility and the opportunity to be heard by objective, third-party experts
- High profile
- To advance the international law on violence against women specific to Indigenous women and girls



**FAFIA-AFAI**

Feminist Alliance for  
International Action

L'Alliance Féministe pour  
l'Action Internationale

**CANADA**



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## CAMPAIGN OF SOLIDARITY WITH ABORIGINAL WOMEN

The international law on violence against women

*Violence and discrimination*

*The due diligence standard*



# ***Sources of Law***

UN CEDAW, 1979

CEDAW General Recommendation No 19, 1992

UN Declaration on Violence against Women, 1993

OAS Convention on the Prevention, Punishment and  
Eradication of Violence against Women (“Convention of  
Belem do Para”), 1994

# ***Discrimination and Violence***

Root causes of violence:

- Stereotyped roles of women
- Subordination to men
- Devaluation of women
- Power Imbalances
- Structural inequalities

## ***Different Formulations***

- Discrimination is the root cause of violence
- Gender-based violence is an extreme form of discrimination

# ***What rights are impaired by violence***

(CEDAW General Recommendation No 19, para 7):

- Right to life;
- Right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- Right to equal protection according to humanitarian norms in international or internal armed conflict;
- Right to liberty and security of person;
- Right to equal protection under the law;
- Right to equality in family;
- Right to the highest standard attainable of physical and mental health;
- Right to just and favourable conditions of work.

# ***Sex, Race and Indigeneity***

- In the case of Indigenous women, there is more than one form of discrimination at work.
- Here's what the IACHR says:

Indigenous women are victims of multiple forms of discrimination. They face two layers of discrimination from the time they are born: first as members of their racialized indigenous group and second on the basis of their status as women

# ***Root Causes***

“Canadian authorities and civil society organizations agree on the root causes of the..high levels of violence against Indigenous women and the existing vulnerabilities that make Indigenous women more susceptible to violence.

These root causes are related to a history of discrimination beginning with colonization and continuing through laws and policies such as the Indian Act and residential schools. These root causes have laid the foundations of pervasive violence against indigenous women, and have created circumstances that contribute to the risks these women face, through economic poverty, social dislocation, and psychological trauma.”



## ***Individual and collective dimensions***

The IACHR stresses that violence against indigenous women has both an individual and a collective dimension.

It constitutes an offense to a woman's dignity and an offense to the culture of the community to which she belongs.

# ***The Due Diligence Standard***



# ***Government Obligation***

*Velasquez Rodriguez v Honduras*, 1988:

A State is accountable if “a violation of rights occurred with the support or the acquiescence of the government, or...the State...allowed the act to take place without taking measures to prevent it or to punish those responsible” (para 173)

# ***Four Elements***

The duty to act with due diligence has four elements:

1. to prevent
2. to investigate
3. to punish
4. to make reparations

# ***Prevent and Respond***

States must adopt measures to:

- Prevent risk factors
- Strengthen institutions so they can respond to violence

# ***Preventive Measures***

“The IACHR has held that the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. Moreover, the Inter-American system has established that the obligation of prevention encompasses all those measures of a legal, political, administrative and cultural nature that ensure protection of human rights, which include improving women’s enjoyment of economic, social and cultural rights.” (para. 171).



# ***Summary***

The due diligence standard requires Canada to:

1. Adopt specific measures to prevent violence against Aboriginal women and girls
2. Enact measures to address the social and economic marginalization of Aboriginal women and girls
3. Ensure that police and the justice system respond diligently and adequately to investigate, prosecute and punish the perpetrators of the violence
4. Use all means – legal, political and administrative – at its disposal to address the violence.

## ***Failure to Act with Due Diligence***

A State's failure to act with due diligence to protect women from violence constitutes a form of discrimination and denies women equality before the law.

Lack of due diligence leads to impunity, and continuation of the violence.