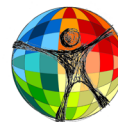


# **Somos Americanos? The Potential of the Inter-American Human Rights System for Indigenous Justice in Canada**

*Sara Gold*

McGill Centre for  
Human Rights  
and Legal Pluralism



Centre sur les droits de la  
personne et le pluralisme  
juridique de McGill



**McGill**

Faculty of Law  
Faculté de Droit

# ABOUT CHRLP

Established in September 2005, the Centre for Human Rights and Legal Pluralism (CHRLP) was formed to provide students, professors and the larger community with a locus of intellectual and physical resources for engaging critically with the ways in which law affects some of the most compelling social problems of our modern era, most notably human rights issues. Since then, the Centre has distinguished itself by its innovative legal and interdisciplinary approach, and its diverse and vibrant community of scholars, students and practitioners working at the intersection of human rights and legal pluralism.

CHRLP is a focal point for innovative legal and interdisciplinary research, dialogue and outreach on issues of human rights and legal pluralism. The Centre's mission is to provide students, professors and the wider community with a locus of intellectual and physical resources for engaging critically with how law impacts upon some of the compelling social problems of our modern era.

A key objective of the Centre is to deepen transdisciplinary collaboration on the complex social, ethical, political and philosophical dimensions of human rights. The current Centre initiative builds upon the human rights legacy and enormous scholarly engagement found in the Universal Declaration of Human Rights.

# ABOUT THE SERIES

The Centre for Human Rights and Legal Pluralism (CHRLP) Working Paper Series enables the dissemination of papers by students who have participated in the Centre's International Human Rights Internship Program (IHRIP). Through the program, students complete placements with NGOs, government institutions, and tribunals where they gain practical work experience in human rights investigation, monitoring, and reporting. Students then write a research paper, supported by a peer review process, while participating in a seminar that critically engages with human rights discourses. In accordance with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded. Therefore, papers in this series may be published in either language.

The papers in this series are distributed free of charge and are available in PDF format on the CHRLP's website. Papers may be downloaded for personal use only. The opinions expressed in these papers remain solely those of the author(s). They should not be attributed to the CHRLP or McGill University. The papers in this series are intended to elicit feedback and to encourage debate on important public policy challenges. Copyright belongs to the author(s).

# ABSTRACT

This paper explores how Canada's full commitment to the Inter-American human rights system (IAS) could provide a further recourse for monitoring, protecting and promoting Indigenous rights in Canada. Presenting the Americas as a single united continent, it emphasizes how reconceptualising what it means to "be American" can help Canadians think about their connection, comprehension and acceptance of this regional system. This paper scrutinizes the Canadian government's historical disinterest in the IAS and establishes this as the primary reason for its current lack of commitment. It argues that Canada's ratification of the American Convention on Human Rights and recognition of the Inter-American Court of Human Rights would positively impact the rights of Indigenous peoples living within its borders. It concludes by highlighting a current Canadian initiative that is working towards making Canada a better player in the IAS and contends that the Canadian government should follow their lead.

# CONTENTS

<b>INTRODUCTION</b>	<b>6</b>
<b>SOMOS AMERICANOS?</b>	<b>9</b>
<b>CANADA'S RELATIONSHIP TO THE INTER-AMERICAN SYSTEM</b>	<b>12</b>
<b>CANADA'S RATIFICATION OF THE CONVENTION AND RECOGNITION OF THE COURT'S JURISDICTION AS A SUPPLEMENTARY RECOURSE FOR INDIGENOUS JUSTICE IN CANADA</b>	<b>22</b>
<b>CONCLUSION</b>	<b>37</b>
<b>BIBLIOGRAPHY</b>	<b>39</b>
<b>APPENDIX I: ACRONYMS</b>	<b>45</b>
<b>APPENDIX II: ORGANIZATIONAL CHART OF RELEVANT IAS ENTITIES AND DOCUMENTS</b>	<b>46</b>

## Introduction

*"By living in the Americas, we share a responsibility to learn from and value its diversity, both contemporary and historical".*

— Jimmy Ung, 2016, "Americano"<sup>1</sup>

What does it mean to be "American"? In the English language, this word often refers to the United States ("US"), rather than to the continent whose name it derives from.<sup>2</sup> In Spanish, the word takes on a different meaning. While some associate it with being born in the US, others view it as all-encompassing: being "American" is a commitment to the history that shaped this continent. Being "American" ties them to the larger global community. Being "American" is an expression of solidarity. Being "American" implies belonging to a unique, hemispheric identity.

Some believe the continent needs no label - the term "American" loses its legitimacy in an increasingly globalized world. Others do not associate with the term at all. In a continent that was invaded, and not discovered, it is difficult to imagine how any institution could reconcile the interests of the colonizers with the colonized, especially when it comes to questions of human rights. How could a single system be willing or be competent enough to deal with the various legal systems and traditions that make up the Americas?<sup>3</sup> However, in the context of human rights monitoring, such a system *does* exist. The *American Convention on Human Rights* ("Convention" or "ACHR")<sup>4</sup> exemplifies the historically-rooted desire to create an inclusive legal framework for the Americas. This is illustrated in its Preamble which reaffirms

---

<sup>1</sup> Jimmy Ung, *Americano: Photo Stories* (Montreal, 2016) at 3 [Ung].

<sup>2</sup> I reflect on this question in great detail in the blog I wrote for the McGill International Human Rights Internship Program. See Sara Gold, "On being 'American'" (10 September 2018), online (blog): *McGill Human Rights Interns* <<https://blogs.mcgill.ca/humanrightsinterns/2018/09/10/on-being-american/>>.

<sup>3</sup> Philip Alston, "Against a World Court for Human Rights" (2014) NYU School of Law, Public Research Paper No. 13-71 1 at 8.

<sup>4</sup> For a list of acronyms, please see Appendix I.

the “intention to consolidate in this hemisphere [...] a system based on respect for the essential rights of man”.<sup>5</sup> The Inter-American System (“IAS”) emerges from a shared commitment to monitor, promote and protect human rights among the peoples of the Americas.<sup>6</sup> This is accomplished through the region’s two principal human rights entities: the Inter-American Commission on Human Rights (“Commission” or “IACHR”) and the Inter-American Court of Human Rights (“Court” or “IACtHR”).<sup>7</sup>

During the summer of 2018, I interned at the IACtHR. Working with over sixty colleagues from across the Americas allowed me to reflect on what it means to be “American”, and whether I, as a Canadian, could be included within that definition. During my time in San José, I was the only Canadian at the Court.<sup>8</sup> Often, my colleagues (politely) asked why I was there, as Canada has neither ratified the *Convention* nor submitted to the Court’s jurisdiction.<sup>9</sup> I went to learn about the IAS, but quickly became fascinated by Canada’s reticence, as it apparently contrasted with Canada’s international reputation as being committed to human rights.

Although Canada is often globally perceived as a champion of human rights, it is not immune from human rights violations, especially from those experienced by Indigenous peoples within its own borders. Despite the well-developed legal framework and many policy initiatives that are protective of Indigenous communities, there is a wide gap in well-being between Indigenous and non-Indigenous peoples in Canada.<sup>10</sup> Troubling socio-economic conditions, barriers to education, inadequate housing, lack of access to health services, limited justice and safety, and intrusions on Indigenous land rights are all examples of how Indigenous peoples rights are not being

---

<sup>5</sup> *American Convention on Human Rights “Pact of San José, Costa Rica” (B-32)*, 22 November 1969 OASTS No 36, 1144 UNTS 123 at Preamble (entered into force 18 July 1978) [Convention].

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> The Inter-American Court of Human Rights is located in San José, Costa Rica.

<sup>9</sup> As we will see in Section II, a state party must ratify the *Convention* and submit to the Court’s jurisdiction in order to have contentious cases heard or be brought against them. Nevertheless, non-signatory members can still request advisory opinions from the Court.

<sup>10</sup> James Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, UNHRC, A/HRC/27/52/Ad 2 (2014) 1 at 1 [Anaya].

respected in Canada. The story of Indigenous peoples in Canada resembles those of their Latin American counterparts: they share the same colonial history of dispossession, exploitation and oppression.

Indigenous communities in Latin America are increasingly relying on international law to enforce their human rights, especially when there is lack of political will and/or widespread distrust in domestic alternatives.<sup>11</sup> Many groups have turned to the IAS as a forum to enforce their rights.<sup>12</sup> Could Indigenous communities in Canada do the same? Indigenous groups in Canada are aware of the Commission. For example, the Native Women's Association of Canada ("NWAC") and the Canadian Feminist Alliance for International Action ("FAFIA") invited the Commission to a hearing on missing and murdered Indigenous women in Canada.<sup>13</sup> However, Indigenous groups' mobilization is limited by the fact that Canada has not signed the *Convention* or recognized the jurisdiction of the Court.

The question then becomes: "Would Indigenous peoples in Canada benefit from its ratification of the *Convention* and recognition of the jurisdiction of the Court? As I will demonstrate, the answer is yes, Canada's ratification would allow for its full commitment to the IAS, and provide a further recourse for monitoring, protecting and promoting Indigenous rights in Canada.

This paper is divided into four sections. My work draws upon sources from a variety of disciplines which include law, politics, economics, music, cultural studies and history. Section I presents the Americas as a single united continent and illustrates how this understanding can help Canadians think about their connection, comprehension and acceptance of the IAS. As this piece is heavily based in history, **Section II** specifies a historical account of Canada's relationship to the IAS. I begin by detailing

---

<sup>11</sup> Jo M Pasqualucci, "The Evolution of International Indigenous Rights in the Inter-American Human Rights System" (2006) 6:2 Human Rights L Rev 281 at 282 [Pasqualucci].

<sup>12</sup> *Ibid.*

<sup>13</sup> Missing and Murdered Indigenous Women in British Columbia, Canada" (2014) at 17, online (pdf): *Inter-American Commission on Human Rights* <<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>> ["MMIW BC Report"].



Canada's connection to the IAS before and after 1990, which marks the year Canada joined the Organization of American States ("OAS"). I then proceed by explaining the functioning of the IAS' two principal entities for human rights. Section III dissects the core question asked throughout this paper and reflects on the impact of Canada's full commitment to the IAS on Indigenous peoples within its borders. I conclude by highlighting a current Canadian initiative that is working towards making Canada "a better player" in the IAS: Université du Québec à Montréal's (UQAM) "S'ouvrir aux Amériques" project (SOAA).<sup>14</sup> Ultimately, Canada has this optional legal avenue to supplement internal Indigenous justice.<sup>15</sup> This paper will demonstrate why we should use it.

## Somos Americanos?

### *"The Continent of Life"*

#### – Defining Abya Yala, in the language of the Kuna<sup>16</sup>

In Spanish, "Somos Americanos" means "we are American". In order to better understand the impact of Canada's adherence to the IAS, it is crucial to first examine what it means to be "American". This section will highlight the history that underlines this question and discuss how communities in Canada, as "Americans", can create linkages between their identity and the regional system.

The idea of a single united continent can be traced back to 1826 when Simón Bolívar convened the Congress of Panama, in his vision to unite the states of the Western hemisphere.<sup>17</sup> The

---

<sup>14</sup> See "Our Project" (2018), online: SOAA: *S'ouvrir aux Amériques* <<https://soaa.uqam.ca/project/>> [SOAA, "Our Project"].

<sup>15</sup> In this paper, Indigenous justice means the monitoring, protection and promotion of Indigenous rights.

<sup>16</sup> Abya Yala is the name the Kuna peoples (of what is now Panama and Colombia) use to refer to the American continent. See Penny A Weiss, ed, *Feminist Manifestos: A Global Documentary Reader* (New York: NYU Press, 2018) at 519 [Weiss].

<sup>17</sup> Canada, Standing Senate Committee on Human Rights, *Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights* (Ottawa: The Senate, 2003) (The Honourable Shirley Maheu) at 8 ["2003 Senate Report"].

struggle for independence from European colonial rule in several Latin American states, combined with similar struggles for independence in the US, gave rise to Pan-Americanism, a movement that calls for greater cooperation between America's nations.<sup>18</sup>

Carol Hess describes Pan-Americanism as a "congeries of economic, political and cultural objectives that first peaked in the late nineteenth century and [that is] based on the premise that the Americas were bound by geography and common interests".<sup>19</sup> In the US, this idea was first expressed by Thomas Jefferson in which he stated in a famous letter to Alexander von Humboldt that "America has a hemisphere of its own".<sup>20</sup> This idea quickly took political form. In 1823, the country's fifth President, James Monroe, introduced the "Monroe Doctrine" – a key US foreign policy which opposed European control in the Americas.<sup>21</sup> There are many more elements to the Pan-American story that could serve as topics in themselves, but for the purpose of this paper, I focus on how this concept has been used as an underlying framework for the IAS.<sup>22</sup>

Pan-Americanism served as a symbol of political resistance for independence from colonial powers, but it was paradoxically also viewed as a symbol of imperialism. According to Arthur P. Whitaker, a Professor of Latin American history at the University of Pennsylvania in 1954:

*the idea of the congruity of the several parts of America was one which, until the Europeans invented it and propagated it with their maps, had never occurred to anyone in all the agglomerations of Indigenous societies sprinkled over America from Alaska to the Tierra del Fuego.*

---

<sup>18</sup> The Merriam-Webster Dictionary, online, *sub verbo* "Pan-Americanism".

<sup>19</sup> Carol Hess, *Representing the Good Neighbor: Music, Difference, and the Pan American Dream* (New York: Oxford University Press, 2013) at 1-2.

<sup>20</sup> Arthur P Whitaker, "The Origin of the Western Hemisphere Idea" (1954) 98:5 *Proceedings of the American Philosophical Society* 323 at 323 [Whitaker].

<sup>21</sup> "Monroe Doctrine" (last modified 26 April 2017), online: *The Library of Congress – Virtual Services Digital Reference Section* <<https://www.loc.gov/rr/program/bib/ourdocs/monroe.html>>.

<sup>22</sup> Whitaker, *supra* note 20 at 323.

*To this day the surviving remnants of those societies have never accepted the idea; to them, Pan Americanism is gibberish.*<sup>23</sup>

Whitaker advances a valid critique. Pan-Americanism was a way for those who came to the New World to finally dissociate themselves from being European. It was an opportunity for those living in the New World to claim the continent as their own. However, this was accomplished at the expense of Indigenous peoples already living on the continent, through dispossession, exploitation and oppression. For this reason, many Indigenous peoples may not consider themselves “American” or as part of the countries in where their territories are located today.<sup>24</sup> This is definitely the case in Canada, where most of its cities are located on traditional and unceded Indigenous territories.<sup>25</sup>

However, it is possible to reconceptualise what it means to be a citizen living on the territory that makes up this continent. Jimmy Ung, who travelled from Montreal to Ushuaia by motorcycle redefined Pan-Americanism as a “civil movement”, a sense of “unity” between citizens of the Americas, which implies first and foremost solidarity, a cultural union, rather than a political one.<sup>26</sup> Canada’s participation in the IAS would allow for communities within its borders to be exposed to other communities on the continent. This exposure would help different communities create the unity which would surpass the traditional limitations of Pan-Americanism and create the foundation for Ung’s interpretation of the term. Ultimately, even if one does not call themselves “American”, Canada’s participation would provide a forum for this unity to commence, not only to redress one’s own

---

<sup>23</sup> Whitaker, *supra* note 20 at 323.

<sup>24</sup> For example, in Latin America many refer to the American continent as Abya Yala. See Weiss, *supra* note 16 at 519. In North America, many refer to North America as Turtle Island. See “Turtle Island – where’s that?” (2018), online: CBC Kids <<https://www.cbc.ca/kidscbc2/the-feed/turtle-island-wheres-that>>.

<sup>25</sup> Territorial acknowledgement is now common practice at many universities in Canada. See Canadian Association of University Teachers (CAUT), “CAUT Guide to Acknowledging Traditional Territory” (2006), online: Canadian Association of University Teachers: <<https://www.caut.ca/content/guide-acknowledging-first-peoples-traditional-territory>>.

<sup>26</sup> Ung, *supra* note 1 at 1.

past, present and future injustices, but to see those shared injustices redressed across the continent.

### Canada's Relationship to the Inter-American System

*"It is a grandiose idea to think of consolidating the New World [...] this is not possible. Actually, America is separated by climatic differences, geographic diversity, conflicting interests, and dissimilar characteristics".*

— Simón Bolívar, 1815, "The Jamaican Letter"<sup>27</sup>

Was Canada's complete adherence to the IAS ever on anyone's agenda? Before discussing how Canada's full participation in the IAS could advance Indigenous rights in Canada, it is important to situate ourselves within the system. This historical overview examines Canada's wavering commitment to comprehensive integration before and after 1990, which marks the year Canada joined the OAS, of which the IAS forms a part.<sup>28</sup> This discussion is followed by a short explanation of the principal entities that make up the IAS: the IACHR and the IACtHR.

#### *Canada and the Inter-American System: Before 1990*

As established in Section I, Pan-Americanism is a movement that calls for greater cooperation between America's nations. Few Canadians know about this.<sup>29</sup> They know even less about the institutions that evolved out of this shared desire for regional cooperation, like the ones created to protect human rights such as the IACHR or the IACtHR. This ignorance is likely rooted in Canada's historical disinterest in Latin America.

---

<sup>27</sup> Simón Bolívar, "Reply of a South American to a Gentleman of this Island [Jamaica]", in Harold Bierck, ed; Vincente Lecuna, compil; Lewis Bertrand, transl, *Selected Writings of Bolívar, Vol 1 (1810–1822)* (New York: Colonial Press, 1951) 103 at 118.

<sup>28</sup> Bernard Duhaime, "Canada and the Inter-America Human Rights System: Time to Become a Full Player" (2012) 67:3 Intl J 639 at 639 [Duhaime, "Time to Become a Full Player"].

<sup>29</sup> Bernard Duhaime, "Strengthening the Protection of Human Rights in the Americas: A Role for Canada", in Monica Serrano, ed, *Human Rights Regimes in the Americas* (Tokyo: United Nations University Press, 2010) 84 at 87 [Duhaime, "Strengthening the Protection of HR"].

Peter McKenna examined the origins of this disinterest in great detail. He used the 1890 First International Conference on American States as the initial historical event to exemplify Canada's limited involvement in Inter-American affairs. At this event, nations came together to create the International Union of American Republics, which eventually became the Pan-American Union (PAU) in 1910.<sup>30</sup> As Canada depended on Great Britain for all matters related to international relations, it was not invited, and missed out on what was considered as one of the first examples of clear action centered on the pursuit of regional solidarity and cooperation.<sup>31</sup>

McKenna highlights how the "psychological distance between Canada and the southern part of the hemisphere" is exemplified in several early 20<sup>th</sup> century events.<sup>32</sup> In 1910, US Secretary of State Elihu Root eagerly asked Canada to commit to full hemispheric cooperation and even called for "a chair with 'Canada' inscribed on the back [to be put to use] at the council table [...]."<sup>33</sup> Over the years, it came to be referred to as the 'empty chair' given Canada's shaky commitment to hemispheric political life.<sup>34</sup> Its lack of engagement might have been the reason why it was never formally invited to join the PAU.<sup>35</sup> Further, while many Latin American countries were eager to develop diplomatic relations with Canada, others showed less enthusiasm as they wanted to avoid English dominance within the union. Even the US's support for Canadian membership eventually wavered given its fear of "British interference in its hemispheric backyard".<sup>36</sup> Canada was hardly fussed by its growing unpopularity as it was preoccupied with the British Commonwealth and the fledgling League of Nations in the early 1920s.<sup>37</sup> In addition, it did not view

---

<sup>30</sup> "2003 Senate Report", *supra* note 17 at 8.

<sup>31</sup> Peter McKenna, "Canada and the Inter-American System, 1890-1968" (1995) 41:2 *The Australian J of Politics and History* 253 at 254 [McKenna].

<sup>32</sup> *Ibid* at 253.

<sup>33</sup> *Ibid* at 254.

<sup>34</sup> *Ibid*.

<sup>35</sup> "2003 Senate Report", *supra* note 17 at 8.

<sup>36</sup> Laurence Cros, "Canada's Entry into the OAS: Change and Continuity in Canadian Identity" (2012) 67:3 *Intl J* 725 at 727 [Cros].

<sup>37</sup> McKenna, *supra* note 31 at 255.

the Western hemisphere as the key arena to express its international priorities.<sup>38</sup>

Canada's general complacency towards the Americas shifted during World War II. It realized that closer ties with Latin America might benefit its economy and sense of national security.<sup>39</sup> Despite this, it remained aloof. Lester B. Pearson, who was at the time the Under Secretary of State for External Affairs, even stated the government's position to be outside of PAU membership as it believed that it did not need to be part of the hemisphere's principal institution to have positive relations with the Americas.<sup>40</sup> After World War II, Canada focused on the United Nations and on the North Atlantic Treaty Organization (NATO), with the latter better corresponding to Canada's predominant English and French identities of the late 1940s and 50's.<sup>41</sup>

While the OAS was founded in 1948<sup>42</sup>, Canada remained detached until 1972, when it became a permanent observer at the organization.<sup>43</sup> While there were periods where Canada's foreign policy focused more on Latin America, its interest was never sustained. This all changed in the summer of 1989, when Canada's Department of External Affairs recommended it joins the OAS.<sup>44</sup>

### *Canada and the Inter-American System: After 1990*

After 18 years of observation, Canada became a full member of the OAS on January 8, 1990.<sup>45</sup> Canada's entry into the organization demonstrated its international commitment "to respect human rights as provided for in the [OAS] Charter and in

---

<sup>38</sup> Cros, *supra* note 36 at 727.

<sup>39</sup> "2003 Senate Report", *supra* note 17 at 9.

<sup>40</sup> McKenna, *supra* note 31 at 263.

<sup>41</sup> Cros, *supra* note 36 at 732.

<sup>42</sup> "Canada and the Organization of American States" (last modified July 13 2018), online: Government of Canada <[http://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/oas-oea/index.aspx?lang=eng#a2](http://www.international.gc.ca/world-monde/international_relations-relations_internationales/oas-oea/index.aspx?lang=eng#a2)> ["Canada and the OAS"].

<sup>43</sup> "2003 Senate Report", *supra* note 17 at 10.

<sup>44</sup> *Ibid.*

<sup>45</sup> "Department of International Affairs: Order of Entry" (2018), online: OAS <[http://www.oas.org/en/ser/dia/perm\\_observers/entry.asp](http://www.oas.org/en/ser/dia/perm_observers/entry.asp)>.

the American Declaration of the Rights and Duties of Man”.<sup>46</sup> It listed its priorities to be in the areas of democracy, human rights and security.<sup>47</sup> National interest in Canadian membership was a result of the government’s conviction that greater ties with Latin America would respond to increased Canadian public awareness in the region, as well as allow the government to pursue its political and economic interests.<sup>48</sup>

Shortly after its admission, Canada announced that it would likely ratify the *Convention* by the following spring.<sup>49</sup> At first, it seemed as if Canada was finally ready to become a full player in the system. This assertion was strengthened when Canada tried to elect retired Supreme Court Justice Bertha Wilson to the Inter-American Court of Human Rights.<sup>50</sup> Canada quickly learnt that it could not present her as a candidate as it had not signed the ACHR. While government officials did manage to convince Venezuela and Uruguay to present her candidacy, she was defeated by one vote.<sup>51</sup> Given her recognized competence in the field of human rights and the fact that a former foreign minister of the Nicaraguan Somoza government that demonstrated questionable concern for human rights was elected in her place, this loss was especially devastating.<sup>52</sup> After Justice Wilson’s unsuccessful candidacy, “Canada’s enthusiasm for the ratification of the *Convention* seemed to wane”.<sup>53</sup> Nothing happened in 1992. In 1993, Canada announced its support for the Commission and the Court. It also ambiguously mentioned that it was “working on” consulting the federal, provincial and territorial governments on the eventual ratification of the *Convention*.<sup>54</sup>

By 1999, Canada had still not ratified the *Convention*. This inaction was challenged in the House of Commons, when it was

---

<sup>46</sup> Duhaime, “Time to Become a Full Player”, *supra* note 28 at 639.

<sup>47</sup> “Canada and the OAS”, *supra* note 42.

<sup>48</sup> “2003 Senate Report”, *supra* note 17 at 11.

<sup>49</sup> William A Schabas, “Substantive and Procedural Hurdles to Canada’s Ratification of the American Convention on Human Rights” (1991) 16:3 *Nethl QHR* 315 at 316 [Schabas].

<sup>50</sup> *Ibid* at 320.

<sup>51</sup> “2003 Senate Report”, *supra* note 17 at 23.

<sup>52</sup> Schabas, *supra* note 49 at 320.

<sup>53</sup> *Ibid* at 321.

<sup>54</sup> Schabas, *supra* note 49 at 316.

asked to the then Minister of Foreign Affairs, the Honorable Lloyd Axworthy why Canada had still not signed on. His response was the following:

*Before Canada can ratify a human rights convention, we must ensure that we are in a position to live up to the commitments we would undertake by ratifying it. Since 1991, consultations have been conducted with federal, provincial and territorial officials to assess compliance of federal and provincial legislation with the convention. The review process has been complicated by the vague, imprecise and outdated language used in the convention. Many provisions in the convention are ambiguous or contain concepts which are unknown or problematic in Canadian law. More importantly, many provisions of the convention are inconsistent with other international human rights norms, making it difficult for us to comply with both the ACHR and those norms [...].*

*Canadians are already entitled to bring petitions to the Inter-American Commission on Human Rights alleging human rights violations. Therefore, even without ratification of the ACHR, Canadians already benefit fully from the Inter-American human rights system.<sup>55</sup>*

The question was again asked when the Government of Canada responded to a June 2001 Report of the Standing Committee for Foreign Affairs. The government's response indicated once more that ratification was not a policy priority as the Convention contained a number of provisions that were inconsistent and problematic for Canadian law.<sup>56</sup>

---

<sup>55</sup> "2003 Senate Report", *supra* note 17 at 6.

<sup>56</sup> Article 4(1) of the Convention, the provision protecting the right to life "in general from the moment of conception" is the main source of concern highlighted in the 2003 report. Other provisions (13, 14, 21, 22(5), 24 and 28) were also questioned but deemed easier to address than 4(1). See "2003 Senate Report", *supra* note 17 at 7, 42-51.



In 2003 and 2005, the Canadian Standing Senate Committee on Human Rights recommended that Canada adheres to the *Convention* in order to enhance Canada's role in the OAS. The 2003 report examined the question in detail and studied Canada's entry into the OAS by examining its link to the Americas. The report's subtle wording was noteworthy, given that it hinted that Canada could be interpreted as a separate entity that is *linked* to the American continent. This detail is especially interesting given that the first line of the current message on the website of the Ambassador and Permanent Representative of Canada to the OAS indicates that "Canada is a country of the Americas".<sup>57</sup> Nuances aside, the report clearly explained the Inter-American human rights system to a Canadian audience. It also highlighted the results of its discussions with government and non-governmental actors in areas of concern within the *Convention*. Many witnesses were consulted to write the report: 85 to be exact.<sup>58</sup>

The 2003 report set July 18, 2008 as the deadline for Canadian ratification of the *Convention*. By 2005, the second report was issued as the deadline was approaching and no action had yet been taken. By 2008, the *Convention* had still not been signed.

The 2003 report did highlight why Canadian government officials were reluctant to ratify the ACHR. Many believed that the ratification of the *Convention* would have little impact on Canadians; that ratification would raise the issue of the jurisdiction of the Inter-American Court, and that Canada was already subjected to the jurisdiction of the Inter-American Commission.<sup>59</sup>

In the 2000s, Canadian government officials clearly indicated their interest to regionally collaborate on economic issues, more so than human rights. For example, Jean Chrétien pushed his (ridiculously named) the "more amigos the better" approach when indicating his support for the Free Trade Area of the Americas, in preparation for the Quebec City Summit of the

---

<sup>57</sup> "Canada and the OAS", *supra* note 42.

<sup>58</sup> "2003 Senate Report", *supra* note 17 at 63-66.

<sup>59</sup> "2003 Senate Report", *supra* note 17 at 40-41.

Americas.<sup>60</sup> On his first trip to Latin America in 2007, Stephen Harper said that the Americas was a “critical international priority for our country [and] that Canada is committed to playing a bigger role in the Americas and to doing so for the long term”.<sup>61</sup> But what type of role has Canada played? It is well-known that our long-term presence in Latin America is through the many Canadian companies that extract non-renewable natural resources on a large-scale basis and whom often disregard the rights of Indigenous peoples in the region.<sup>62</sup> Despite this great economic focus, which can be the topic of another paper in itself, government officials will quickly emphasize how Canada is party to several Inter-American legal instruments.<sup>63</sup> Furthermore, it has made significant monetary contributions to the IAS – most often through financing its institutions.<sup>64</sup>

In the present day, Canada’s “commitment” to Inter-American human rights remains uncertain. As of August 2019, it has still not signed the *Convention*.<sup>65</sup> Canada’s possible adherence remains a low public priority. Many regular Canadians remain unaware of the system’s existence. Canada’s indifference may be due to the fact that Canadians do not feel as close in values and goals to Latin American countries, like they do with US and the United Kingdom.<sup>66</sup> However, in our current climate, our connection to even those countries could be easily debated.

---

<sup>60</sup> Andrew F Cooper, “Canada’s Engagement with the Americas in Comparative Perspective: Between Declaratory Thickness and Operational Thinness” (2012) 67:3 Intl J 685 at 686 [Cooper].

<sup>61</sup> *Ibid* at 695.

<sup>62</sup> Working Group on Mining and Human Rights in Latin America, “The Impact of Canadian Mining in Latin America and Canada’s Responsibility: Executive Summary” (2014) at 20, online (pdf): DPLF – *Fundación para el debido proceso* <[http://www.dplf.org/sites/default/files/report\\_canadian\\_mining\\_executive\\_summary.pdf](http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf)>.

<sup>63</sup> “2003 Senate Report”, *supra* note 17 at 12.

<sup>64</sup> Duhaime, “Time to Become a Full Player”, *supra* note 28 at 639; “Canada and the OAS”, *supra* note 42.

<sup>65</sup> A 2019 publication by Honourable Marie Deschamps, former justice of the Supreme Court of Canada, points out many issues with Canada’s possible accession to the ACHR. See Marie Deschamps, “L’approche Canadienne: assurer la protection des droits de la personne de façon distinctive” (2019) 49 *Revue générale de droit* 29 [Deschamps, “L’approche Canadienne”].

<sup>66</sup> Cros, *supra* note 36 at 744.

*Two Principal Entities for Human Rights in the Americas: The Inter-American Commission and the Inter-American Court*

The IAS is a regional human rights system. The IACHR and the IACtHR are the two monitoring bodies that make up the IAS and safeguard human rights in the region. They are responsible for ensuring the implementation of human rights set out in the 1948 American Declaration on the Rights and Duties of Man ("ADRDM" or *American Declaration*)<sup>67</sup> and in the 1969 *Convention*.<sup>68</sup> The IAS also derives authority from the Charter of the OAS<sup>69</sup> and several additional conventions and protocols that constitute the basic documents of the IAS.<sup>70</sup>

The Inter-American Commission on Human Rights

The IACHR is a regional human rights commission, and is responsible for ensuring that OAS Member States respect human rights.<sup>71</sup> The principal work of the Commission is accomplished through "the individual petition system; [the] monitoring of the human rights situation[s] in the Member States, and the attention devoted to priority thematic areas".<sup>72</sup> The Commission can assess everyone – including non-signatories to the *Convention*. This is

---

<sup>67</sup> The *American Declaration*, alongside the *Convention*, is one of the two main OAS instruments that outlines states' human rights obligations. See *American Declaration of the Rights and Duties of Man*, 30 April 1948 (entered into force 30 April 1948) [*American Declaration*].

<sup>68</sup> *Convention*, *supra* note 5.

<sup>69</sup> This is the document that sets out the creation of the OAS. See *Charter of the Organization of American States (A-41)*, 30 April 1948 (entered into force 13 December 1951).

<sup>70</sup> "Inter-American Commission on Human Rights (IACHR): Basic Documents in the Inter-American System" (2011), online: OAS <[http://www.oas.org/en/iachr/mandate/basic\\_documents.asp](http://www.oas.org/en/iachr/mandate/basic_documents.asp)>; See Appendix II for an organizational chart that overviews the OAS entities and documents that are relevant for this paper.

<sup>71</sup> "Inter-American Commission on Human Rights (IACHR): Statute of the Inter-American Commission on Human Rights" (2011) at art 18, online: OAS <<http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp>>.

<sup>72</sup> "Inter-American Commission on Human Rights (IACHR): What is the IACHR?" (2011), online: OAS <<http://www.oas.org/en/iachr/mandate/what.asp>>.

because it was created *before* the ACHR,<sup>73</sup> which obligates it to evaluate non-signatories in light of the *American Declaration*.<sup>74</sup>

The Commission is not a victim's first stop. Before filing a complaint with the IACHR, the applicant<sup>75</sup> must have sought out competent judicial or administrative remedies within their states, as well as exercised all available rights of appeal.<sup>76</sup> If the petition is deemed admissible, and no friendly settlements can be reached, the Commission then files a report which provides recommendations on the resolution of the conflict.<sup>77</sup> If the conflict is not solved, and the State respects the jurisdiction of the IACHR, the case is referred to the Court.<sup>78</sup>

As Canada is a non-signatory, it is only subject to petitions rooted in the *American Declaration*.<sup>79</sup> Few petitions against Canada have been filed before the Commission. For example, in 2017, the Commission received 5 petitions against Canada, whereas it received 536 against Colombia and 819 against Mexico.<sup>80</sup> Duhaime rationalizes this difference in "the probable fact that fewer violations are committed in Canada than in most other member states and by the likely fact that the Canadian judicial system is comparably more capable to remedy violations internally, or at least appears to be perceived so".<sup>81</sup> Frankly, I believe that the low number of filed petitions is mostly due to the lack of awareness amongst Canadians about the Commission as a recourse. A quick, informal online survey amongst my

---

<sup>73</sup> The Commission was created in 1959 whereas the *Convention* entered into force in 1978.

<sup>74</sup> Schabas, *supra* note 49 at 317-318; "Inter-American Commission on Human Rights (IACHR): Rules of Procedure of the Inter-American Commission on Human Rights" (2011) at art 51, online: OAS <<http://www.oas.org/en/iachr/mandate/basics/rulesiachr.asp>> ["IACHR Rules of Procedure"].

<sup>75</sup> The applicant can be a state, non-governmental organizations or individuals.

<sup>76</sup> Bernard Duhaime « Le système interaméricain et la protection des droits économiques, sociaux et culturels des personnes et des groupes vivant dans des conditions particulières de vulnérabilité » (2007) 44 Can YB Intl Law 95 at 115-116.

<sup>77</sup> "IACHR Rules of Procedure", *supra* note 74 at art 47.

<sup>78</sup> *Ibid* at art 45.

<sup>79</sup> Duhaime, "Time to Become a Full Player", *supra* note 28 at 641.

<sup>80</sup> "Statistics by Country", (2016), online: *Inter-American Commission on Human Rights* <<http://www.oas.org/en/iachr/multimedia/statistics/statistics.html>>.

<sup>81</sup> Duhaime, "Time to Become a Full Player", *supra* note 28 at 642.

colleagues and friends, including lawyers and law students indicated that few are aware of the Commission's (and the Court's) functions.<sup>82</sup>

### The Inter-American Court of Human Rights

The Inter-American Court was established in 1978, in accordance with article 33 of the *Convention*.<sup>83</sup> It is headquartered in San José, Costa Rica, although sessions are occasionally held away from its seat.<sup>84</sup> It is composed of seven judges, all whom are representatives of Member States. Judges can be nationals of non-signatory states, however "only State Parties to the *Convention* may present candidates and elect judges".<sup>85</sup> A Canadian has never served as a judge.

The Court serves three functions. First, it can issue an order or judgment on a *contentious* matter, "which is binding for states as a matter of public international law".<sup>86</sup> Second, at the request of the Commission or any Member State, it can "adopt advisory opinions regarding the interpretation of the *Convention*, [the compatibility of one of its laws with the *Convention*] or [on] any other instrument related to human rights in the Americas".<sup>87</sup> Finally, the Court can adopt provisional measures in serious and urgent cases. Claims can be brought by individuals against states, or by states against other states, although the latter is uncommon.

The Commission cannot refer a case about Canada to the Court because Canada has not ratified the ACHR nor has it expressly recognized the jurisdiction of the Court.<sup>88</sup> Nevertheless, Canada could request an advisory opinion from the Court.<sup>89</sup>

---

<sup>82</sup> Eight Canadians know about the work of the Court and the Commission, while fifty do not. Out of the eight individuals who do know, they are either my classmates, close friends, or former/current interns at the Court.

<sup>83</sup> "2003 Senate Report", *supra* note 17 at 23.

<sup>84</sup> For example, in the summer of 2018, a Special Session was held in El Salvador.

<sup>85</sup> "2003 Senate Report", *supra* note 17 at 23.

<sup>86</sup> Duhaime, "Time to Become a Full Player", *supra* note 28 at 640.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid* at 644.

## **Canada's Ratification of the Convention and Recognition of the Court's Jurisdiction as a Supplementary Recourse for Indigenous Justice in Canada**

*"Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law".*

— Article 1, UNDRIP, 2008<sup>90</sup>

So far, I have outlined that one's interpretation of "being American" should center around the promotion of solidarity and mutual concern for the welfare of communities living on this continent. I presented an in-depth historical account of Canada's relationship with the IAS in order to understand its relationship to the Americas. These sections have provided the necessary background to allow the reader to be prepared for the next inquiry, which is, whether Canada's full commitment to the IAS would positively impact the rights of Indigenous peoples living within its borders.

The aim of this section is to test this assertion. It will be divided into five sub-sections. First, I will overview the current status of Indigenous rights in Canada. I will describe how Indigenous peoples' rights are not being respected despite the existence of a well-established political and legal framework. Second, I will briefly touch upon how Indigenous communities across the continent are increasingly relying on international law to enforce their human rights, especially when there is lack of political will and/or absence of domestic options. Third, I will highlight all of the arguments that show the positive impact of Canada's full commitment to the IAS on Indigenous peoples within its borders. Fourth, these arguments will be challenged in a discussion on the limitations of the IAS for Indigenous rights in Canada. Finally, I will conclude that regardless of the system's constraints, the more options, the better, and that it should remain an available option to Indigenous peoples in Canada.

---

<sup>90</sup> United Nations Declaration on the Rights of Indigenous Peoples, UNGA, Sixty-first session, A/RES/61/295 (2007) 1 at art 1.

*Indigenous Rights in Canada: The Uncomfortable Truths*

It is troubling that Canada is not fully committed to the IAS, as it is negating another opportunity for recourse for the human rights violations that Indigenous peoples experience within its borders. I will demonstrate that despite Canada's well established legal framework and the many policy initiatives that are protective of Indigenous peoples, there is nonetheless a wide gap in well-being between Indigenous and non-Indigenous peoples in Canada.<sup>91</sup> Distressing socio-economic conditions, barriers to education, inadequate housing, lack of access to health services, limited justice and safety and intrusions on Indigenous land are all examples of the ways Indigenous peoples rights are being violated in Canada.

Before summarizing the uncomfortable truths about Indigenous rights in Canada, it is important to note how Canada's legal framework is in many ways, protective of Indigenous peoples' rights.<sup>92</sup> These are succinctly outlined in the 2014 report issued by the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya:

*[First], Canada's 1982 Constitution ["CA, 1982"] was one of the first in the world to enshrine Indigenous peoples' rights, recognizing and affirming the aboriginal and treaty rights of the Indian, Inuit and Métis people of Canada.<sup>93</sup> Those provisions protect aboriginal title arising from historical occupation, treaty rights and culturally important activities. [Second] Canada's courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights.<sup>94</sup> [Third] Canada is a party to the major United Nations human rights treaties, and in 2010, reversing its previous position, it endorsed the United Nations Declaration on the Rights of*

---

<sup>91</sup> Anaya, *supra* note 10 at 1.

<sup>92</sup> *Ibid* at 5.

<sup>93</sup> See Constitution Act, 1982, s 35, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

<sup>94</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193; *Haida Nation v British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 245 DLR (4th) 33.

*Indigenous Peoples. [Fourth] in 2008, Canada made a historic apology to former students of some Indian residential schools, in which it expressed a commitment to healing and reconciliation [...] some action has been taken in this regard, including the ongoing implementation of the Indian Residential Schools Settlement Agreement [...] and the creation of the Truth and Reconciliation Commission.*<sup>95</sup>

While many actions have been taken by the Canadian government to maintain positive relations with Indigenous peoples, many challenges remain. Indigenous peoples face constant barriers in Canada and are consistently disadvantaged as compared to non-Indigenous peoples.

### 1. Distressing socio-economic conditions

Canada is considered to be a developed country.<sup>96</sup> Despite its high standard of living, many Indigenous peoples in Canada are living in distressing socio-economic conditions. In his 2014 report, James Anaya highlighted that “of the bottom 100 Canadian communities on the Community Wellbeing Index, 96 are First Nations, while only one of the top 100 communities are First Nations communities”.<sup>97</sup> In a 2010 Report (“CHRC Report”) on Equality Rights of Aboriginal Peoples, the Canadian Human Rights Commission (CHRC) showed that “regardless of age and sex, the proportion of Aboriginal adults in low-income status is much higher than those of non-Aboriginal adults”.<sup>98</sup>

### 2. Barriers to education

Education is closely correlated to socio-economic well-being. It is also used to measure a country’s level of human

---

<sup>95</sup> Anaya, *supra* note 10 at 5-6.

<sup>96</sup> “Top 25 Developed and Developing Countries” (last modified 28 September 2016), online: Investopedia <<https://www.investopedia.com/updates/top-developing-countries/>>.

<sup>97</sup> Anaya, *supra* note 10 at 7.

<sup>98</sup> “Report on Equality Rights of Aboriginal People” (2013) at 17, online (pdf): Canadian Human Rights Commission <[https://www.chrc-ccdp.gc.ca/sites/default/files/equality\\_aboriginal\\_report.pdf](https://www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf)> [CHRC Report].



development on an international scale.<sup>99</sup> Indigenous children face barriers in educational enrolment and attainment. One reason for this discrepancy is the jurisdictional confusion that arises from Indigenous peoples falling under federal jurisdiction and education falling under provincial jurisdiction. Poverty, discrimination and a history of colonialism also explain why “at every level of education, Indigenous peoples continue to lag far behind the general population”.<sup>100</sup> Lack of culturally relevant education also contribute to these unsettling discrepancies.

### 3. Inadequate housing

An estimated 20,000 peoples in First Nations communities across Canada have no running water or sewage.<sup>101</sup> One in five Indigenous peoples live in a dwelling that is in need of major repairs.<sup>102</sup> Anaya describes the housing situation in Inuit and First Nations communities as a “crisis”, especially in the North, where extreme weather intensifies housing problems.<sup>103</sup>

### 4. Lack of access to health services

Canada’s federal government has jurisdiction over Indigenous peoples through s.91(24) of the *Constitution Act, 1867* (“CA 1867”).<sup>104</sup> However, Canada’s provinces have jurisdiction over certain matters, like health services through s.92 (8) of the CA, 1867.<sup>105</sup> Regional authorities might also have jurisdiction over the provision of health services to their constituents. These overlapping jurisdictions can result in grave consequences, as different orders of government rely on each

---

<sup>99</sup> *Ibid* at 34.

<sup>100</sup> Anaya, *supra* note 10 at 7.

<sup>101</sup> “Americas: Sacrificing Rights in the Name of Development: Indigenous Peoples Under Threat in the Americas” (2011) at 4, online (pdf): *Amnesty International*  
<<https://www.amnesty.org/en/documents/AMR01/001/2011/en/>>.

<sup>102</sup> Statistics Canada, “The Housing Conditions of Aboriginal People in Canada”, Catalogue No 98-200-X2016021 (Ottawa: Statistics Canada, 2016) at 1.

<sup>103</sup> Anaya, *supra* note 10 at 8.

<sup>104</sup> Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, s 91(24), reprinted in RSC 1985, Appendix II, No 5.

<sup>105</sup> *Ibid* at s 92(8).

other to act.<sup>106</sup> Oftentimes, Indigenous peoples will be the first to slip through the cracks.

#### 5. Limited justice and safety

Indigenous peoples are overly represented in the Canadian criminal justice system. The CHRC Report demonstrates that “regardless of sex, the proportion of Aboriginal offenders incarcerated is substantially higher than that of non-Aboriginal offenders”.<sup>107</sup> Furthermore, Indigenous peoples comprise of 24 percent of Canada’s prison population, while only making up 4 percent of the general population.<sup>108</sup>

In addition, Indigenous peoples, and specifically Indigenous women and girls, are vulnerable to higher levels of domestic abuse and crime. In Canada, many know who we are referring to when we say “missing and murdered”. Over the past twenty years, NWAC has documented “over 660 cases of women and girls across Canada who have gone missing or been murdered”.<sup>109</sup>

#### 6. Intrusions on Indigenous land

In Canada, many communities have been fighting for years to assert their rights to their lands. Anaya underscores a chilling contradiction that Indigenous peoples live with daily: “so many live in abysmal conditions on traditional territories that are full of valuable and plentiful natural resources”.<sup>110</sup> Much like their Latin American counterparts, the land of Indigenous peoples in Canada has been pillaged by their colonizers. Anaya draws attention to the many proposed or implemented development projects that have posed great concern to Indigenous communities in Canada.<sup>111</sup> Two examples include the:

- 1) The Kinder Morgan Trans Mountain pipeline twinning project; and the

---

<sup>106</sup> Anaya, *supra* note 10 at 10.

<sup>107</sup> CHRC Report, *supra* note 98 at 54.

<sup>108</sup> Anaya, *supra* note 10 at 10.

<sup>109</sup> Anaya, *supra* note 10 at 10.

<sup>110</sup> *Ibid* at 17.

<sup>111</sup> *Ibid* at 18-19.

2) Site C hydroelectric dam on the Peace River affecting Treaty 8 nations.<sup>112</sup>

It is therefore evident that the status of Indigenous rights in Canada is *still* abysmal. While there are many Indigenous and domestic mechanisms to assert Indigenous rights, Indigenous communities in Canada might find international law to be yet another tool to denounce these injustices.

*Indigenous Rights and International Law*

International law is an avenue where Indigenous communities are increasingly asserting their rights. When there are no laws that recognize Indigenous rights, or such laws exist but there is no political will to enforce them, or when communities are simply looking for a supplementary recourse, they turn to parallel human rights systems like the IAS.<sup>113</sup>

A case at the Commission shows how an Indigenous person in Canada asserted their rights on an international stage, and notably within the IAS.<sup>114</sup> Grand Chief Michael Mitchell ("Grand Chief Mitchell") of the Mohawk First Nations presented a petition against Canada to the Commission in 2001, alleging that Canada violated the right to culture in Article XIII of the *American Declaration*.<sup>115</sup> The petitioners (which comprised of Mitchell and his representation - Hutchins Caron & Associés in Montréal) contended that "Canada had incurred international responsibility for denying Grand Chief Mitchell's right to bring goods, duty free, across the U.S./Canada border dividing the territory of the Indigenous community".<sup>116</sup> Canada rejected the petitioners' contention and responded that the "Canadian courts recognized an aboriginal claim to duty-free trade during the domestic proceedings".<sup>117</sup> Further, they raised a tension that will be eventually discussed in the sub-section on the IAS' limitations.

---

<sup>112</sup> *Ibid.*

<sup>113</sup> Pasqualucci, *supra* note 11 at 282.

<sup>114</sup> See *Grand Chief Michael Mitchell v Canada* (2008), Inter-American Comm HR, No 61/08, *Annual Report of the Inter-American Commission on Human Rights: 2008*, OEA/Ser L/V/II 134/doc 5, rev 1 [Grand Chief Mitchell].

<sup>115</sup> *American Declaration*, *supra* note 67 at Article XIII.

<sup>116</sup> The Akwesasne territory encompasses portions of the Canadian provinces of Quebec, Ontario and the State of New York in the United States; *Grand Chief Mitchell*, *supra* note 114 at para 3.

<sup>117</sup> *Ibid* at para 48.

The Supreme Court of Canada (SCC) had already ruled on this matter, so they said that “it [was] not the role of the Commission to re-assess findings of fact made by the Supreme Court”.<sup>118</sup>

While the Commission eventually rejected the petitioners’ claims<sup>119</sup>, this claim remains a notable example of an Indigenous person mobilizing to get their rights recognized in a forum that is not in Canada. The next section will examine how more actions like the petitioners could better monitor, promote and protect the human rights of Indigenous peoples in Canada.

*The Inter-American Human Rights System as a Mechanism to Protect Indigenous Rights in Canada*

Individuals like Bernard Duhaime, Mariana Balcorta, Pierre-Gilles Bélanger and Ariane Rémy Quevedo have discussed the benefits of Canada’s full participation in the IAS.<sup>120</sup> In 2003 and 2005, the Canadian Standing Senate Committee on Human Rights met and recommended that Canada adheres to the *Convention* in order to play a greater role in the OAS. While all of these discussions have briefly touched on the impact of Canada’s complete adherence for human rights in Canada, few have focused on how this decision could impact Indigenous rights in Canada.

Therefore, this section will examine four ways in which Canada’s ratification of the *Convention* and recognition of the Court’s jurisdiction could better protect Indigenous rights in Canada.

1. It is a supplementary recourse for protecting Indigenous rights in Canada

A previous section highlighted the various gaps that exist between Indigenous and non-Indigenous peoples in Canada. Should Canada sign the *Convention*, Indigenous peoples could use the applicable law to uphold the rights that are currently being violated.

---

<sup>118</sup> *Ibid*; See *Mitchell v MNR*, [2001] 1 SCR 911, 199 DLR (4th) 385.

<sup>119</sup> *Grand Chief Mitchell*, *supra* note 114 at para 84.

<sup>120</sup> See Nelson Arturo Ovalle Diaz. “Introduction” (2019) 49 *Revue générale de droit* 1 at 10.

First, the *Convention* calls for the protection of certain rights that relate to the previously discussed issues, including rights of the child, to life, human treatment, personal liberty, fair trial, privacy, property, equal protection, judicial protection, freedom of movement and residence, and freedom from slavery.<sup>121</sup> Article 26 even calls for State Parties to fully commit to the realization of economic, social, educational and cultural rights in their countries.<sup>122</sup>

Of particular interest is Article 21 given that it protects the right to property, which is a right that is not enshrined in Canada's *Charter of Human Rights and Freedoms* ("*Charter*").<sup>123</sup> The use of this provision may be especially relevant in cases touching on the exploitation of Indigenous land. In the 2003 Senate Report, questions were raised about the provision's potential incompatibility to Canadian law due to its focus on individual (rather than collective) property rights.<sup>124</sup> This critique was quickly rebutted by a judgement of the IACtHR which included the collective property rights of Indigenous communities as part of Article 21.<sup>125</sup> As a result, the Senate Committee decided that there was no incompatibility between the provisions of Canadian law respecting Aboriginal title to land, including section 35 of the CA, 1982, and article 21 of the *Convention*.<sup>126</sup>

Second, the Court has issued a multitude of decisions that address the human rights violations that Indigenous peoples are currently experiencing in Canada. Indigenous groups could certainly refer to these. This is especially relevant in cases of femicide, which is also occurring in Canada, through the crisis of missing and murdered Indigenous women and girls. *Campo Algodonero* (or "Cotton Field" in English) is one of the Court's

---

<sup>121</sup> See *Convention*, *supra* note 5 at arts 4, 5, 6, 7, 8, 11, 16, 19, 21, 22, 24 and 25.

<sup>122</sup> *Convention*, *supra* note 5 at art 26.

<sup>123</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), c 11.

<sup>124</sup> "2003 Senate Report", *supra* note 17 at 47.

<sup>125</sup> *Ibid*; *Mayagna (Sumo) Community of Awas Tingni (Nicaragua)* (2001), Inter-Am Ct HR (Ser C) No 79 at paras 148-149, *Annual Report of the Inter-American Court of Human Rights: 2001*, OEA/Ser L/V/III 54 Doc 4 (2002).

<sup>126</sup> "2003 Senate Report", *supra* note 17 at 47.

most famous cases on femicide.<sup>127</sup> In this case, three young women disappeared after leaving work in Ciudad Juarez, Mexico. Their families received no help from law officials, as they dismissed their claims saying that these young women were “probably with their boyfriends”.<sup>128</sup> They were eventually found murdered in the cotton fields of Ciudad Juarez. Their bodies displayed clear signs of physical and psychological abuse, torture, mutilation and sexual abuse.<sup>129</sup> The case eventually made it to the Court. The repercussions of the Court’s ruling were monumental for Inter-American case law as the judgement “became a point of reference for many judicial and quasi-judicial bodies dealing with cases of violence against women (“VAW”), [...] the relations between discrimination and VAW, and the scope of States obligations”.<sup>130</sup> While this judgement did not specifically address the disappearance of Indigenous women, it clarified the way we understand reparations for gender-based violence.

However, other judgements do specify the Court’s standards of protection for Indigenous women experiencing violence. For example, *Fernández Ortega*, touched on the difficulties encountered by Indigenous women in accessing justice, especially in cases of rape and torture at the hands of the state.<sup>131</sup> *Rosendo Cantu* was a similar case, as a girl from an Indigenous community in Mexico was raped and tortured by military personnel. This decision discussed the special needs of women, minors and Indigenous communities dealing with situations of sexual violence.<sup>132</sup> These discussions could be useful to groups advocating for Indigenous rights in Canada, especially in regard to missing and murdered Aboriginal women and girls.

Third, Canada’s full commitment to the IAS would provide for greater and broader international human rights protection for

---

<sup>127</sup> González et al (“Cotton Field”) (Mexico) (2009), Inter-Am Ct HR (Ser C) No 205, *Inter-American Yearbook on Human Rights*: 2009, Vol: 25 (2013) [Cotton Field].

<sup>128</sup> *Cotton Field*, *supra* note 127 at para 147.

<sup>129</sup> *Ibid* at para 125.

<sup>130</sup> Lorena PA Sosa, “Inter-American Case Law on Femicide: Obscuring Intersections” (2017) 35:2 *Nethl QHR* 85 at 85.

<sup>131</sup> Fernández Ortega et al (Mexico) (2010), Inter-Am Ct Hr (Sec C) No 215, *Inter-American Yearbook on Human Rights*: 2010, Vol: 26 (2014).

<sup>132</sup> Rosendo Cantú et al (Mexico) (2010), Inter-Am Ct Hr (Sec C) No 216, *Inter-American Yearbook on Human Rights*: 2010, Vol: 26 (2014).

Indigenous communities. This point is succinctly explained by Duhaime:

*Currently, persons alleging violations of their human rights who are unable to obtain a remedy domestically may only refer their claims internationally to the United Nations Human Rights Committee (alleging violations of the International Covenant on Civil and Political Rights or to the Inter-American Commission on Human Rights alleging violations of the American Declaration). While both institutions provide for a valid international remedy, neither the UN Committee nor the Inter-American Commission on Human Rights allows for a full trial, during which oral arguments are made, witnesses and experts can be examined, and exhibits can be presented. The Inter-American Court provides for such a process, which allows for a fuller, more complete procedure, more visibility for issues and victims, as well as greater procedural judicial guarantees for states willing to defend themselves.<sup>133</sup>*

The Senate Committee also highlights other benefits of ratifying the *Convention* which could in turn, positively impact Indigenous communities in Canada. Ratifying the *Convention* would make it possible for Canada to ratify the San Salvador Protocol on Social, Economic and Cultural Rights (an additional protocol to the *Convention*) which would give communities access to the IACHR cases on trade union rights, the right to education, the right to health, the right to a healthy environment, the right to food and more.<sup>134</sup>

## 2. It is an opportunity to facilitate sharing strategies

Even though every country is bound by its own history and political context, there are common issues that are dealt with in the IAS. Canada's adherence to the *Convention* would ultimately

---

<sup>133</sup> Duhaime, "Time to Become a Full Player", *supra* note 28 at 649.

<sup>134</sup> "2003 Senate Report", *supra* note 17 at 56-57; *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* "Protocol of San Salvador", 17 November 1988 (entered into force 16 November 1999); Also see Appendix II.

result in Canada's greater participation in the myriad of opportunities and events that make up the Inter-American culture. Adhesion would allow for Indigenous groups in Canada to participate in the system's activities. This could result in their construction of greater linkages with other Indigenous and non-Indigenous groups in the Americas. Integration into the IAS would facilitate networking between Indigenous communities which would allow them to share ideas and strategies across international boundaries. Canada's provision of this type of network would be in line with my definition of "being American" as this would be an example of communities working with others towards the mutual objective of promoting the well-being of peoples on this continent. While not only catered to Indigenous groups specifically, SOAA is an example of a platform that serves this very purpose, as it is a space for Canadians "to better understand, share and propose solutions drawn from the Latin American experience of human rights violations claims and denunciations" in order to find solutions to encourage states to better promote and protect human rights.<sup>135</sup>

### 3. Canada's submission to international scrutiny increases its credibility

Canada is certainly not doing human rights "better" than everyone else. There needs to be international checks and balances in regard to Canada's commitment to human rights. Canada's full participation in the IAS would allow for its promise to improve relations with Indigenous peoples to be scrutinized on an international stage.

Canada has already been scrutinized in the IAS, such as through the Commission's 2014 report on missing and murdered Indigenous women in British Columbia.<sup>136</sup> The aim of this report was to turn international and regional attention to this issue in Canada. Inquiries, such as this one, could encourage domestic and international mobilization in support of state practices that correspond to Canada's responsibility to uphold Indigenous rights. Canada's adhesion to the IAS would allow for it to be fully evaluated. Further, it would be hypocritical for Canada to publicly denounce the actions of other IAS Member States if it did not care

---

<sup>135</sup> SOAA, "Our Project", *supra* note 14.

<sup>136</sup> "MMIW BC Report", *supra* note 13.



for bolstering its own human rights reputation.<sup>137</sup> Ultimately, some scrutiny would be helpful in ensuring Canada fulfills its human rights obligations towards Indigenous peoples.

4. More cases about Canada in the IAS would enrich the system's case law and could support Indigenous justice across the continent

In my view, “being American” means being willing to learn from each other. Canada’s ratification of the *Convention* would allow for it to contribute and learn from the case law of the IAS. As Canada’s judiciary is autonomous, independent and efficient, it “is reasonable to assume [that] most cases brought against Canada before the Inter-American Commission and later to the Court would likely have exhausted all domestic remedies, including Canadian Supreme Court processes, and would essentially deal with controversial, complex, and sophisticated issues of law and policy”.<sup>138</sup> Canada’s adhesion to the *Convention* would allow it to take part in debate over greater hemispheric questions, which could potentially impact Indigenous peoples in Canada.

*The Limitations of the Inter-American Human Rights System for Indigenous Rights in Canada*

As the above section outlined the many advantages of Canada’s full participation in the IAS, I will now highlight the system’s limitations in protecting Indigenous rights in Canada.

First, Indigenous peoples in Canada already have many domestic options for recourse in the face of human rights violations. In some cases, they can turn to the community for guidance. They can bring a case to our domestic courts. They are protected under section 35 of the CA, 1982, as all levels of government, including federal, provincial, territorial, municipal and Indigenous are obliged to protect Indigenous and treaty rights.<sup>139</sup> Individuals or communities can file a complaint at the CHRC or at any of the provincial human rights commissions. Would another legal opinion be the most effective solution?

---

<sup>137</sup> “2003 Senate Report”, *supra* note 17 at 56.

<sup>138</sup> Duhaime, “Time to Become a Full Player”, *supra* note 28 at 651.

<sup>139</sup> “MMIW BC Report”, *supra* note 13 at 60-61.

Second, the quality of the Commission and the Court as institutions, have been criticized, and with reason. One of the IAS's greatest limitations is its delays. There is a backlog of cases and petitions waiting for a timely response. At the Commission, it was determined that it takes an average of six and a half years from the initial submission of a petition to the final merits decision.<sup>140</sup> In 2017, it was determined that the average time required to process cases before the Court was approximately 24,7 months.<sup>141</sup> Delays between the first complaint and the Court's decision have stretched more than 20 years. These significant delays stretch far beyond the 18-month deadline instituted by the Supreme Court of Canada in *R v. Jordan* (2016).<sup>142</sup> They are mostly due to the system's lack of resources. Both the Commission and the Court do not have the necessary human resources to provide timely responses. These institutions are heavily dependent on a temporary workforce, mostly comprised of students and visiting professionals. This constant 3-4-month turnover, as I witnessed at the Court, can have huge impacts on productivity. Could it even be guaranteed that Indigenous peoples in Canada would receive timely justice through the IAS?

Third, the system has been criticized for the observed low levels of compliance with its rulings. In a 2010 study, Basch et al researched state's degree of compliance with decisions adopted within the framework of the system of petitions of the *Convention*. They show, that on average, total compliance is found in 47% of the cases and partial compliance is 13%.<sup>143</sup> There are many reasons for those numbers which include the general climate of rule of law in some Member States, or a state's commitment to human rights and the standards set out in the IAS. Regardless of the reason, it is important to consider that even if Canada did

---

<sup>140</sup> "Maximizing Justice, Minimizing Delay: Streamlining Procedures of the Inter-American Commission on Human Rights" (2011) at 4, online (pdf): *Human Rights Clinic – The University of Texas School of Law* <<https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2012-HRC-IACHR-Maximizing-Justice-Report.pdf>>.

<sup>141</sup> "Annual Report 2017" (2018) at 60, online (pdf): *Inter-American Court of Human Rights* <<http://www.corteidh.or.cr/tablas/informe2017/ingles.pdf>>.

<sup>142</sup> Deschamps, "L'approche Canadienne" *supra* note 65 at 40.

<sup>143</sup> Fernando Felipe Basch, "The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to Its Functioning and Compliance with Its Decisions" (2010) 7:12 *Sur J – Intl JHR* 9 at 18.

adhere to the *Convention*, it may not respect the decisions of the Commission or the Court if it is not entirely convinced of their legitimacy. Would the system therefore have *any* impact for Indigenous human rights protection in Canada?

Fourth, few Indigenous peoples may even know about the system as a recourse. Duhaime explains Canada's low participation in the IAS is due "to a lack of knowledge of the system in general among Canadian victims and the Canadian legal community".<sup>144</sup> How could the system be a supplementary recourse for Indigenous justice, if communities do not even know about it?

Finally, Indigenous peoples in Canada may view the IAS as incompatible with their circumstances. Is a Commission or Court really the best avenue to express their human rights concerns? International judicial action may not be the recourse they need.<sup>145</sup> It was already established that the system can be ineffective and inefficient, which may deter some from participating. In addition, Indigenous communities in Canada may perceive the IAS-established human rights norms as inapplicable to their conditions and "to reflect a model of relationships between Indigenous populations and the state based on a variety of Latin American realities that are radically different from those in English-speaking North America".<sup>146</sup> Ultimately, Indigenous peoples may feel that this regional system is not preferable given that the borders that define its jurisdiction are those of a colonial state. Why would they submit themselves to a jurisdiction they do not even consider to be theirs?

*The More, the Better: An International Option for Indigenous Peoples in Canada*

It is important to understand the IAS's limitations in order to have realistic expectations of its capabilities. Regardless of the

---

<sup>144</sup> Duhaime, "Strengthening the Protection of HR", *supra* note 29 at 87.

<sup>145</sup> Martha Minow, "Law and Social Change" (1993) 62:1 UMKC L Rev 171 at 173.

<sup>146</sup> Paolo Carozza, "The Anglo-Latin Divide and the Future of the Inter-American System of Human Rights" (2015) 5:1 Notre Dame J of Intl & Comparative L 153 at 165.

system's constraints, it should still remain an available option for Indigenous peoples in Canada.

The IAS human rights protection should be available *if communities wish to use it*. It does not replace existing human rights mechanisms but provides a parallel option. The 2003 Senate Report persuasively summarizes this point:

*Although it is true that Canadians already enjoy protection under the Charter as well as federal and provincial human rights legislation, this Committee believes that human rights norms and complaint mechanisms are developed for the benefit of individuals, not the State. It cannot be said that people have so much protection that they do not need any more. In addition, ratification of international treaties and recognition of the jurisdiction of the bodies created to oversee their implementation give another level of protection not afforded by domestic courts, especially in Canada where the absence of legislation implementing international treaties seriously limits the possibility of invoking them before the courts.<sup>147</sup>*

As such, Canada's full commitment to the IAS would not radically alter existing, domestic frameworks. Instead, it might reinforce the government's concrete commitment to reconciliation as it would be allowing itself to be submitted to scrutiny on the international stage. A third party with no history of abuse towards Canada's Indigenous peoples would be able to scrutinize Canada's regard for the rights of Indigenous peoples, which may mobilize an increased number of state policies and practices that uphold Indigenous rights.

---

<sup>147</sup> "2003 Senate Report", *supra* note 17 at 40, [emphasis added].

## Conclusion

*“Todos somos Americanos”*

— Barack Obama, 2016, “Remarks by President Obama to the People of Cuba”<sup>148</sup>

It is time for Canada to become a better player in the Inter-American system. If Canada considers itself “a country of the Americas” and places “great value on building and nurturing relationships with partners in the Americas”, it should sign the *Convention* and recognize the Court’s jurisdiction.<sup>149</sup> If Canada claims to be “committed to achieving reconciliation” it should not negate a supplementary opportunity for Indigenous justice in Canada.<sup>150</sup>

In this paper, I have demonstrated that Canada’s full commitment to the IAS would provide a further recourse for monitoring, protecting and promoting Indigenous rights in Canada. Although Canada claims to be “a champion of human rights”, Indigenous peoples are often most adversely affected by inequalities in this country.

Other individuals and organizations understand how full participation in the IAS could benefit Indigenous peoples in Canada. Bernard Duhaime, a professor of international law at UQAM and one of the only Canadian specialists in the Inter-American system is leading a project called “S’ouvrir aux Amériques”.<sup>151</sup> Its goal is to allow “Canadians to better understand, share and propose solutions drawn from the Latin-American experiences of human rights violations claims and denunciations.”<sup>152</sup> This initiative is an example of Canadians connecting to their continental identity in order to advance human

---

<sup>148</sup> “Remarks by President Obama to the People of Cuba” (22 March 2016), online: *The White House – President Barack Obama* <<https://obamawhitehouse.archives.gov/the-press-office/2016/03/22/remarks-president-obama-people-cuba>>.

<sup>149</sup> “Canada and the OAS”, *supra* note 42.

<sup>150</sup> “Principles respecting the Government of Canada’s relationship with Indigenous peoples” (last modified 14 February 2018), online: *Government of Canada – Department of Justice* <<https://www.justice.gc.ca/eng/csjsjc/principles-principes.html>>.

<sup>151</sup> SOAA, “Our Project”, *supra* note 14.

<sup>152</sup> *Ibid.*

rights in their country. It is now up to the Canadian government to follow their lead.

## Bibliography

### LEGISLATION

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

*Constitution Act, 1867 (UK)*, 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

*Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

### JURISPRUDENCE

*Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193.

*Haida Nation v British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 245 DLR (4th) 33.

*Mitchell v MNR*, [2001] 1 SCR 911, 199 DLR (4th) 385.

### INTERNATIONAL MATERIALS

*Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* “Protocol of San Salvador”, 17 November 1988 (entered into force 16 November 1999).

*American Convention on Human Rights* “Pact of San José, Costa Rica” (B-32), 22 November 1969 OASTS No 36, 1144 UNTS 123 (entered into force 18 July 1978).

*American Declaration of the Rights and Duties of Man*, 30 April 1948 (entered into force 30 April 1948).

*Charter of the Organization of American States* (A-41), 30 April 1948 (entered into force 13 December 1951).

Fernández Ortega et al (Mexico) (2010), Inter-Am Ct Hr (Sec C) No 215, *Inter-American Yearbook on Human Rights*: 2010, Vol: 26 (2014).

González et al ("Cotton Field") (Mexico) (2009), Inter-Am Ct HR (Ser C) No 205, *Inter-American Yearbook on Human Rights*: 2009, Vol: 25 (2013).

*Grand Chief Michael Mitchell v Canada* (2008), Inter-American Comm HR, No 61/08, *Annual Report of the Inter-American Commission on Human Rights*: 2008, OEA/Ser L/V/II 134/doc 5, rev 1.

*Mayagna (Sumo) Community of Awas Tingni (Nicaragua)* (2001), Inter-Am Ct HR (Ser C) No 79, *Annual Report of the Inter-American Court of Human Rights*: 2001, OEA/Ser L/V/III 54 Doc 4 (2002).

Rosendo Cantú et al (Mexico) (2010), Inter-Am Ct Hr (Sec C) No 216, *Inter-American Yearbook on Human Rights*: 2010, Vol: 26 (2014).

*United Nations Declaration on the Rights of Indigenous Peoples*, UNGA, Sixty-first session, A/RES/61/295 (2007) 1.

## SECONDARY MATERIALS

### Articles

Alston, Philip. "Against a World Court for Human Rights" (2014) NYU School of Law, Public Research Paper No. 13-71 1.

Basch, Fernando Felipe. "The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to Its Functioning and Compliance with Its Decisions" (2010) 7:12 Sur J – Intl JHR 9.

Carozza, Paolo. "The Anglo-Latin Divide and the Future of the Inter-American System of Human Rights" (2015) 5:1 Notre Dame J of Intl & Comparative L 153.

Cooper, Andrew F. "Canada's Engagement with the Americas in Comparative Perspective: Between Declaratory Thickness and Operational Thinness" (2012) 67:3 Intl J 685.

Cros, Laurence. "Canada's Entry into the OAS: Change and Continuity in Canadian Identity" (2012) 67:3 Intl J 725.



Deschamps, Marie. "L'approche Canadienne: assurer la protection des droits de la personne de façon distinctive" (2019) 49 *Revue générale de droit*.

Duhaime, Bernard. "Canada and the Inter-America Human Rights System: Time to Become a Full Player" (2012) 67:3 *Intl J* 639.

Duhaime, Bernard. "Strengthening the Protection of Human Rights in the Americas: A Role for Canada", in Monica Serrano, ed, *Human Rights Regimes in the Americas* (Tokyo: United Nations University Press, 2010) 84.

Duhaime, Bernard. « Le système interaméricain et la protection des droits économiques, sociaux et culturels des personnes et des groupes vivant dans des conditions particulières de vulnérabilité » (2007) 44 *Can YB Intl Law* 95.

McKenna, Peter. "Canada and the Inter-American System, 1890-1968" (1995) 41:2 *The Australian J of Politics and History* 253.

Minow, Martha. "Law and Social Change" (1993) 62:1 *UMKC L Rev* 171.

Pasqualucci, Jo M. "The Evolution of International Indigenous Rights in the Inter-American Human Rights System" (2006) 6:2 *Human Rights L Rev* 281.

Schabas, William A. "Substantive and Procedural Hurdles to Canada's Ratification of the American Convention on Human Rights" (1991) 16:3 *Nethl QHR* 315.

Sosa, Lorena PA. "Inter-American Case Law on Femicide: Obscuring Intersections" (2017) 35:2 *Nethl QHR* 85.

Whitaker, Arthur P. "The Origin of the Western Hemisphere Idea" (1954) 98:5 *Proceedings of the American Philosophical Society* 323.

#### *Books*

Hess, Carol. *Representing the Good Neighbor: Music, Difference, and the Pan American Dream* (New York: Oxford University Press, 2013).

Ung, Jimmy. *Americano: Photo Stories* (Montreal, 2016).

Weiss, Penny A, ed. *Feminist Manifestos: A Global Documentary Reader* (New York: NYU Press, 2018).

#### *Canadian Government Documents*

Canada, Standing Senate Committee on Human Rights, *Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights* (Ottawa: The Senate, 2003) (The Honourable Shirley Maheu).

Statistics Canada, "The Housing Conditions of Aboriginal People in Canada", Catalogue No 98-200-X2016021 (Ottawa: Statistics Canada, 2016).

#### *Electronic Sources*

"Americas: Sacrificing Rights in the Name of Development: Indigenous Peoples Under Threat in the Americas" (2011) at 4, online (pdf): *Amnesty International* <<https://www.amnesty.org/en/documents/AMR01/001/2011/en/>>.

"Canada and the Organization of American States" (last modified July 13 2018), online: *Government of Canada* <[http://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/oas-oea/index.aspx?lang=eng#a2](http://www.international.gc.ca/world-monde/international_relations-relations_internationales/oas-oea/index.aspx?lang=eng#a2)>.

Canadian Association of University Teachers (CAUT), "CAUT Guide to Acknowledging Traditional Territory" (2006), online: *Canadian Association of University Teachers*: <<https://www.caut.ca/content/guide-acknowledging-first-peoples-traditional-territory>>.

"Department of International Affairs: Order of Entry" (2018), online: *OAS* <[http://www.oas.org/en/ser/dia/perm\\_observers/entry.asp](http://www.oas.org/en/ser/dia/perm_observers/entry.asp)>.

Gold, Sara. "On being 'American'" (10 September 2018), online (blog): *McGill Human Rights Interns* <<https://blogs.mcgill.ca/humanrightsinterns/2018/09/10/on-being-american/>>.

"Inter-American Commission on Human Rights (IACHR): Basic Documents in the Inter-American System" (2011), online: OAS  
<[http://www.oas.org/en/iachr/mandate/basic\\_documents.asp](http://www.oas.org/en/iachr/mandate/basic_documents.asp)>

"Inter-American Commission on Human Rights (IACHR): Rules of Procedure of the Inter-American Commission on Human Rights" (2011), online: OAS  
<<http://www.oas.org/en/iachr/mandate/basics/rulesiachr.asp>>

"Inter-American Commission on Human Rights (IACHR): Statute of the Inter-American Commission on Human Rights" (2011), online: OAS  
<<http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp>>.

"Inter-American Commission on Human Rights (IACHR): What is the IACHR?" (2011), online: OAS  
<<http://www.oas.org/en/iachr/mandate/what.asp>>.

"Our Project" (2018), online: SOAA: *S'ouvrir aux Amériques* <<https://soaa.uqam.ca/project/>>.

"Statistics by Country", (2016), online: *Inter-American Commission on Human Rights*  
<<http://www.oas.org/en/iachr/multimedia/statistics/statistics.html>>.

"Top 25 Developed and Developing Countries" (last modified 28 September 2016), online: *Investopedia*  
<<https://www.investopedia.com/updates/top-developing-countries/>>.

"Turtle Island – where's that?" (2018), online: CBC Kids  
<<https://www.cbc.ca/kidscbc2/the-feed/turtle-island-wheres-that>>.

Working Group on Mining and Human Rights in Latin America, "The Impact of Canadian Mining in Latin America and Canada's Responsibility: Executive Summary" (2014), online (pdf): DPLF – *Fundación para el debido proceso*  
<[http://www.dplf.org/sites/default/files/report\\_canadian\\_mining\\_executive\\_summary.pdf](http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf)>.

*Entries from Collections of Essays, Dictionaries and  
Encyclopedias*

"Monroe Doctrine" (last modified 26 April 2017), online: *The Library of Congress – Virtual Services Digital Reference Section* <<https://www.loc.gov/rr/program/bib/ourdocs/monroe.html>>.

Simón Bolívar, "Reply of a South American to a Gentleman of this Island [Jamaica]", in Harold Bierck, ed; Vincente Lecuna, compil; Lewis Bertrand, transl, *Selected Writings of Bolívar, Vol 1 (1810–1822)* (New York: Colonial Press, 1951) 103.

The Merriam-Webster Dictionary, online, *sub verbo* "Pan-Americanism".

*Reports*

Anaya, James. *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, UNHRC, A/HRC/27/52/Ad 2 (2014) 1.

"Annual Report 2017" (2018), online (pdf): *Inter-American Court of Human Rights* <<http://www.corteidh.or.cr/tablas/informe2017/ingles.pdf>>

"Maximizing Justice, Minimizing Delay: Streamlining Procedures of the Inter-American Commission on Human Rights" (2011), online (pdf): *Human Rights Clinic – The University of Texas School of Law* <<https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2012-HRC-IACHR-Maximizing-Justice-Report.pdf>>.

"Missing and Murdered Indigenous Women in British Columbia, Canada" (2014), online (pdf): *Inter-American Commission on Human Rights* <<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>>.

"Report on Equality Rights of Aboriginal People" (2013), online (pdf): *Canadian Human Rights Commission* <[https://www.chrc-ccdp.gc.ca/sites/default/files/equality\\_aboriginal\\_report.pdf](https://www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf)>.

## **Appendix I: Acronyms**

**ACHR:** American Convention on Human Rights

**ADRDM:** American Declaration on the Rights and Duties of Man

**CA, 1867:** *Constitution Act, 1867*

**CA, 1982:** *Constitution Act, 1982*

**CHRC:** Canadian Human Rights Commission

**FAFIA:** Canadian Feminist Alliance for International Action

**IACHR:** Inter-American Commission on Human Rights

**IACtHR:** Inter-American Court of Human Rights

**IAS:** Inter-American Human Rights System

**NATO:** North Atlantic Treaty Organization

**NWAC:** Native Women's Association of Canada

**OAS:** Organization of American States

**PAU:** Pan-American Union

**SCC:** Supreme Court of Canada

**SOAA:** S'ouvrir aux Amériques project

**UN:** United Nations

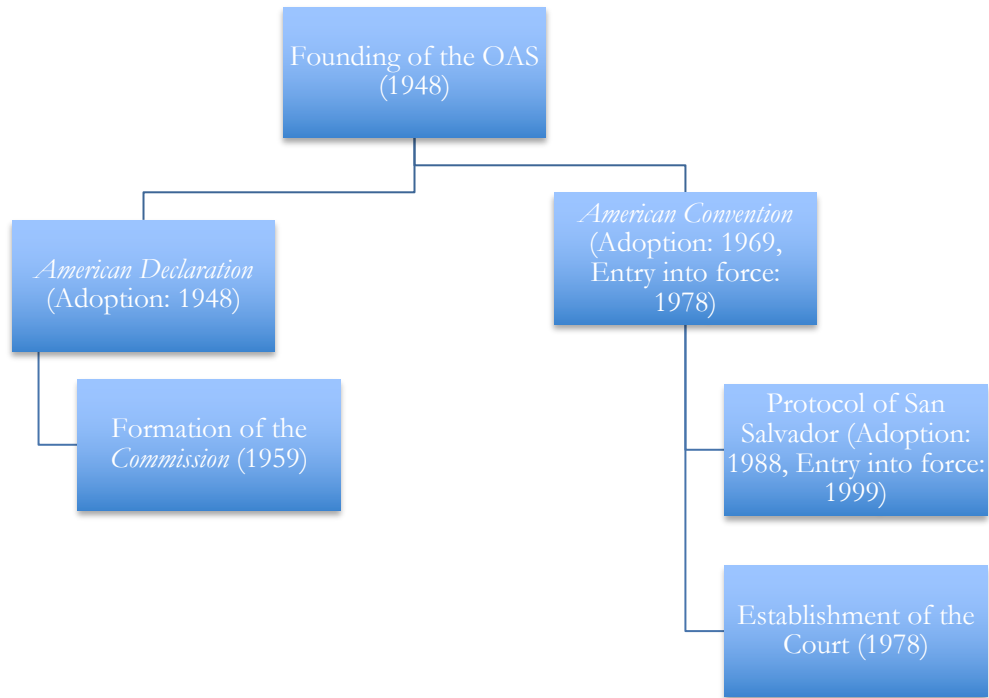
**UNDRIP:** United Nations Declaration on the Rights of Indigenous Peoples

**UQAM:** Université du Québec à Montréal

**US:** United States of America

**VAW:** Violence Against Women

## Appendix II: Organizational Chart of Relevant IAS Entities and Documents



"Inter-American Commission on Human Rights (IACHR): Basic Documents in the Inter-American System" (2011), online: OAS <[http://www.oas.org/en/iachr/mandate/basic\\_documents.asp](http://www.oas.org/en/iachr/mandate/basic_documents.asp)>

.