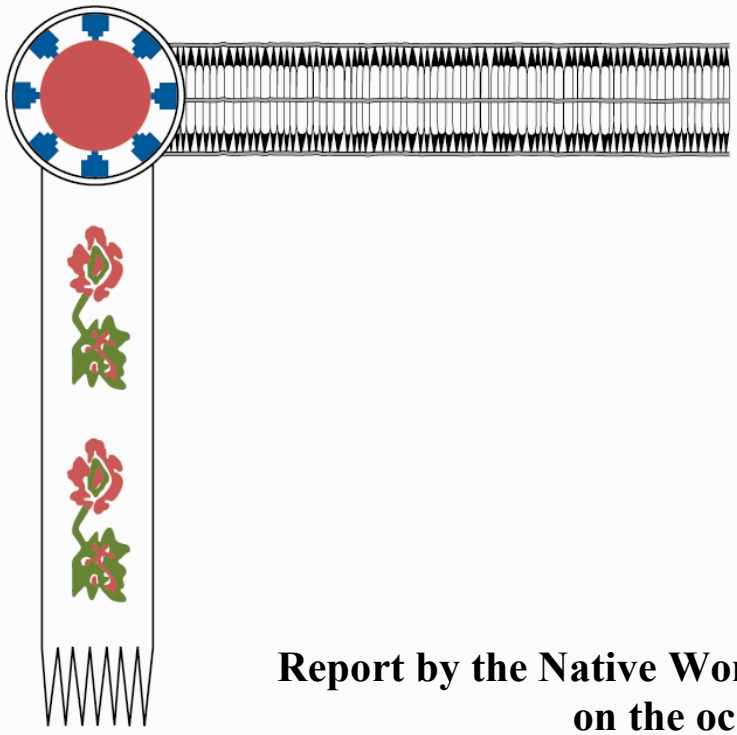

Native Women's Association of Canada

Report by the Native Women's Association of Canada on the occasion of the Review of the Sixth and Seventh Reports of Canada on its Compliance with the Convention on the Elimination of All Forms of Discrimination against Women

October 2008

Introduction

1. The Native Women's Association of Canada (NWAC) is an Indigenous women's representative organization in Canada that promotes the human rights of Indigenous women, their families and communities. NWAC is in special consultative status with the United Nations Economic and Social Council.

2. In this report to the Committee on the Elimination of Discrimination against Women (the Committee), NWAC would like to respond to Canada's Sixth and Seventh Reports of Canada regarding its compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Canada's Report) as well as the "Responses of Canada to the list of issues and questions with regard to the consideration of Canada's sixth and seventh reports on the CEDAW" (Canada's Responses). In our report, NWAC will highlight several areas of concern regarding Canada's fulfillment of its human rights obligations and commitments under CEDAW, outlined below, in relation to the relevant article of CEDAW. Recommendations are in bold.

Violence against Aboriginal Women and Girls (articles 2, 3 and 6)

3. Canada has worked in partnership with NWAC to begin to address violence against Aboriginal women and girls in Canada. However, Canada must do more to address the discrimination and systemic gendered racism that is the root cause of the widespread racialized, sexualized violence faced by Aboriginal women and girls.

4. The root causes of violence against Aboriginal women and girls have also been researched and analyzed. The effects of colonialism and discriminatory federal legislation and policies on Aboriginal women and girls have been severely negative and have weakened their role and position in both Aboriginal and Canadian society This degrading of Aboriginal women's role and responsibilities in society increases their vulnerability in a number of areas, including their vulnerability to being targeted for violence.

5. There is also a well-documented body of research on the poverty, lack of education and employment opportunities, sub-standard housing, and generally lower socio-economic status experienced by Aboriginal women and girls. For example, statistical analysis and research demonstrate that: Aboriginal women and girls find that their poor socio-economic experiences as outlined above combine with the effects of racism and sexism they experience in Canadian society. This limits their ability to achieve economic well-being in Canadian society as it is currently structured, which subsequently impacts negatively on their ability to express preferences or make real

choices between options for housing, employment, income generating activities, and other life decisions.[1]

6. Aboriginal women are often targets of violence as a result of their perceived lower status – with these circumstances commonly described as racialized and/or sexualized violence. In these situations, the victims of violence are being targeted because of their sex and their Aboriginal identity. There is a well-developed body of literature that has identified the negative stereotyping that may be applied to Aboriginal women and girls by other individuals that 'permits' or normalizes identifying them as targets for abuse or violence. This stereotyping is supported by the societal and systemic indifference that has existed towards the issue of violence against Aboriginal women in the past, and that continues in some areas today, as demonstrated by inadequate investigation by police and the failure of courts to prosecute with sufficient vigor. A growing body of research confirms that the combination of racist and sexist attitudes towards Aboriginal women and girls and the failure of the justice system to respond adequately to their needs has created and fueled a unique pattern of violence from strangers or individuals only slightly known to them. This form of violence is the focus of the Sisters in Spirit Initiative, a multi-year research, policy development, education and communications undertaking.

7. The extent of the systemic violence facing Aboriginal women and girls is finally being well documented: what is necessary now is to implement actions, recommendations, policies, measures and legislation that will address this issue. The Native Women's Association of Canada holds that violence against anyone, and specifically against Aboriginal women and girls is completely unacceptable. There are no tolerable levels of violence that should exist in Canadian society, and active measures, policies and legislation must be instituted so that Aboriginal women and girls no longer suffer violence at the hands of family members, acquaintances and strangers. All levels of government must make the elimination of violence against Aboriginal women and girls a priority in all areas.

Recommendations

8. All levels of government should collaborate on a national plan of action that would include increased access to emergency shelters and transitional housing for Aboriginal women and families, and enforcement of court and band protection orders. It would also include measures to address homelessness,

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[1] Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada,* CCPR/C/CAN/CO/5, 20 April 2006, p. 6 at para. 23. See also: Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada,* E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (2006) at para. 44 (poverty and discrimination), para. 56 (need for disaggregated data on the overrepresentation of Aboriginal low income single-mother-led families in involvement of the child welfare system) and para. 70 (disaggregated data on measures adopted to address economic, social and cultural rights).

chronic poverty, over-representation of Aboriginal children in the child welfare system, and access to justice.

9. **Canada must improve the access to justice of Aboriginal women and their families, including reforms to the way police handle and respond to missing persons complaints. For example, there must be greater responsiveness to concerns raised by family members when Aboriginal women do go missing.**

10. **Canada should implement the recommendations contained in the *Stolen Sisters* Report issued by Amnesty International which detail solutions aimed at increasing access to justice and addressing violence against Aboriginal women.**

11. **The systematic collection and public distribution of disaggregated data that includes gender and Aboriginal identity is needed to expose barriers that prevent Aboriginal women and girls from enjoying equality.**

Matrimonial Real Property (articles 2 and 13 [women's access to housing])

12. In Canada's Report and Responses, Canada notes that a Ministerial Representative was appointed to work with NWAC and the Assembly of First Nations (AFN) to resolve the current inequalities facing individuals living on-reserve and references Bill C-47, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* as the solution to this inequality (CEDAW/C/CAN/Q7/Add.1 at 118-120 and 111). NWAC has concerns about this process, the legislation and the lack of concomitant non-legislative solutions.

13. The federal government appointed a Ministerial Representative on June 20, 2006, to lead a process of consultation on matrimonial real property in collaboration with three partners – NWAC, the Assembly of First Nations (AFN), and Indian and Northern Affairs Canada – with the goal of reaching a consensus on a solution to MRP. The participants raised very serious concerns regarding the short time frame of three months for completion of the project. As noted in NWAC's submissions to Parliamentary Standing Committees, NWAC believes a full year was necessary to conduct adequate consultation.

14. In the three months provided, NWAC held extensive meetings across the country with Aboriginal women who had been directly impacted by the lack of matrimonial property laws that apply on reserve. From the very first meeting it was clear that the systemic issues of violence against women, limited access to justice, poverty, housing crises and the power of *Indian Act* Chiefs and Councils were critical non-legislative issues that needed to be addressed alongside any legislative amendment.

15. Canada's Responses states, at 118 to 119, that "Consultations were held from September 2006 to January 2007, and were followed by a consensus-building process involving the Ministerial Representative, the Government of Canada, the Native

Women's Association of Canada and the Assembly of First Nations" and that meaningful discussions took place. However, in the Ministerial Representative's report, it is noted that there was insufficient time to reach consensus between these three parties.[2]

16. In March 2008, the federal government introduced Bill C-47, *the Family Homes on Reserve and Matrimonial Interests or Rights Act* without adequately incorporating the recommendations of the Ministerial Representative, the NWAC and AFN. The Bill did not include acknowledgement of or support for the critical non-legislative measures identified by Aboriginal women.

17. Equality rights for Aboriginal women include both their individual equality rights and their rights as members of their nations. NWAC is concerned that inadequate protection of the collective dimensions of their equality rights could lead to the diminishment of Aboriginal women's rights. Furthermore, legislation alone will create the perception among Canadians that another step has been taken to secure equality for Aboriginal women when the reality will be that little has changed. Aboriginal women have learned through their own experiences of the legislative changes contained in Bill C-31 and the lack of consultations with Aboriginal women leading up to its enactment that this is a recipe for disaster.

Recommendations

18. **The Canadian government should ensure that legal rights are both accessible and enforceable, in order to be meaningful. In relation to matrimonial real property, Canada must take the necessary steps, in partnership with Aboriginal peoples, particularly Aboriginal women's representative organizations, to ensure that the non-legislative measures recommended by Aboriginal women and the Ministerial Representative are in fact implemented.**

The United Nations Declaration on the Rights of Indigenous Peoples (articles 2, 3 and 13)

19. The UN *Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations General Assembly on September 13, 2007. The Declaration is the product of more than two decades of Indigenous diplomacy and advocacy. The Declaration affirms Indigenous peoples must not be denied long established human rights such as the right to self-determination and freedom from discrimination. The Declaration also includes protections specific to the unique circumstances of Indigenous women, including articles 21 and 22 which provides for, respectively, special measures for Indigenous women in relation to their economic and social conditions and the right to

[2] Report of the Ministerial Representative: Matrimonial Real Property Issues on Reserves (Submitted by Wendy Grant-John, March 2007, available online at: http://www.ainc-inac.gc.ca/wige/rmr/rmr_e.pdf) at para. 205.

live free from discrimination and violence for Indigenous women.[3]

20. In a non-binding vote in Parliament on April 8, 2008, all three federal opposition parties supported the Declaration. A private members bill has been brought forward by the Liberal party calling on the Minister of Indian Affairs to report regularly to Parliament on implementation of the Declaration. NWAC supports this Bill.

Recommendations

21. **The Canadian government should report on its implementation of the UN Declaration. Parliament should require regular reports from the Minister of Indian and Northern Development, and all other relevant departments such as Status of Women Canada, on implementation of the Declaration. Federal, provincial and territorial human rights institutions should collaborate with Aboriginal peoples' organizations, including NWAC, to better understand and integrate the Declaration in their work.**

Canadian Human Rights Act (articles 2 and 3)

22. Bill C-21 was passed in June 2008. The Bill removes an exemption under the *Canadian Human Rights Act* (CHRA) that prevented complaints of discrimination under the *Indian Act*. While First Nations persons have always been able to go to the Canadian Human Rights Commission to make complaints of discrimination in other areas of federal jurisdiction, the functioning of the *Indian Act* has been exempt from such complaints for the last 30 years. The Human Rights Commission can now receive complaints about discrimination by the federal government under the *Indian Act*. After a three year transition period, the Commission will also begin

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[3] Article 21 states:

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions, Particular attention shall be paid to the rights and special needs of indigenous elders, youth, children and persons with disabilities.

Article 22 states:

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

investigating allegations of discrimination by First Nations authorities under the *Indian Act*.

23. NWAC has long called for First Nations women to have access to the CHRA as a tool to fight against the discrimination experienced under the *Indian Act*. However, during the debate over the amendment to the CHRA, NWAC also cautioned that time and resources were needed for the Human Rights Commission and for Aboriginal peoples to become familiar with the application of the Act to Aboriginal peoples' lives and experiences. NWAC also called for the provision of resources to First Nations communities to enable the development of conflict resolution processes based on customary law and practices.

Recommendation

24. **Bill C-21 requires that a joint implementation study be carried out by government and First Nations. NWAC recommends that Canada take the necessary measures to ensure that Aboriginal women are full partners in this process. The UN *Declaration on the Rights of Indigenous Peoples* should be used as a source of international human rights norms in this process.**

Bill C-31 (1985 *Indian Act* Amendments to Membership and Status)

25. In relation to the question posed by the Committee to Canada in the "List of issues and questions with regard to the consideration of periodic reports: Canada", CEDAW/C/CAN/Q/7, at para. 24, the discriminatory effects of Bill C-31 towards Aboriginal women have not been addressed by Canada. Canada's response at 118-119 indicates that the "second generation cut-off…affects male and females persons equally" masks the serious lingering inequalities facing Indigenous women resulting from Bill C-31.

26. Bill C-31, *An Act to Amend the Indian Act*, was adopted by Parliament in June 1985. Its intended purpose was to eliminate gender discrimination within the *Indian Act* by which Indian status was denied to First Nations women who had married non-First Nations men -- as well as to the children of these couples – while granting Indian status to non-Indigenous women who married First Nations men. Although Bill C-31 was a response to Aboriginal women's advocacy, in particular the Lavell case in the Supreme Court of Canada and the decision of the United Nations Human Rights Commission in the case of Sandra Lovelace (Nicholas), the provisions of the Act were unilaterally enacted by the government of the day. Though some have seen the enactment of Bill C-31 as a victory for Aboriginal women, that victory was offset by discriminatory provisions in the new legislation and by implementation measures which deepened the hardships faced by Aboriginal women and their children.

27. Bill C-31 provided for the return of Indian status to women who lost status under the *Indian Act*, as well as to their children. However, a Bill C-31 reinstatee can only pass

her own status on to her children if the father also has status and the father's name appears on the birth certificate. No such restriction applies to women who had never lost their status.

28. If the mother does not provide the name of the father for the birth certificate, then the assumption is made by the government is that the father is not entitled to be registered as status. There are a number of reasons why a woman would not state the name of the father of her child, including issues relating to personal safety or experiences of violence, a desire for privacy, or to avoid custody or access claims. Research conducted in 2001 suggested that about one-half of the unstated paternity cases were intentional on the part of the mother. The father's name also may not appear on the birth certificate because of administrative rules. If the parents are unmarried, for example, the father must sign the birth registration form within 60 days of the birth, or else his name is removed from the certificate. This may be difficult for a father who lives in a remote community, especially if the mother traveled outside the community to give birth.

29. A consequence of the discriminatory "second-generation cut-off" enacted in Bill C-31 means that brothers and sisters may have different abilities to pass on their status to their children. Mothers who are restored to Indian status by Bill C-31 will be grandmothers of children who cannot claim status, as well as those who can, depending on the marital arrangements of their parents.

30. Furthermore, while First Nations membership increased as a result of the women and children regaining status under Bill C-31, the funding allocated to First Nations did not increase. As such, the implementation of Bill C-31 created new divisions between individuals and fostered discrimination within First Nations communities. First Nations budgets in housing, education, social assistance and infrastructure sectors have been severely stretched since 1985 due to the increase in members requiring services and supports. Many First Nations women are denied access to adequate services for themselves and their children due to the stress created on the available funding.

31. Finally, since Bill C-31 was introduced there have been hundreds of cases before in the courts. These cases deal with membership issues, status issues and continued discrimination and sexual discrimination within Bill C-31.

Recommendations

32. **The federal government should make a commitment to address and resolve outstanding human rights issues for Aboriginal women through active engagement and consultation with Aboriginal women and their representative organizations. A Bill C-31 Secretariat should be created that will provide coordination, develop an effective communication network, conduct research and consultation, and provide legal and technical resources. First Nations should develop membership codes that are fair and equitable, regardless of**

gender and parentage. Aboriginal and non-Aboriginal governments and institutions should ensure that all future policy and legislation be carefully analyzed through a gender based analysis process within an Aboriginal context.

33. **The provisions of the *Indian Act* must be changed to empower Aboriginal women to identify the eligibility of their children for status, and that children should not be disadvantaged due to unstated paternity. There must be greater provision of protections for women who have legitimate concerns that listing the father's name on the birth certificate would expose them to future harms. Education of Aboriginal parents about the implications of unstated paternity is required; as are changes to unnecessary and arbitrary administrative procedures that prevent the correct registration of births.**

34. **The federal government should not engage in litigation efforts that are aimed at denying the equality rights of Aboriginal women, such as the McIvor case. The federal government should restore funding to the Court Challenges Program which supports marginalized groups in challenging legislation such as Bill C-31.**

Kelowna Accord (articles 10, 11, 12 and 13)

35. The federal government and all provincial and territorial governments supported the 2005 Kelowna Accord. The Accord was significant both because it provided a blueprint to help address the gap in standard of living between Aboriginal and non-Aboriginal people, but also because it demonstrated the ability of Aboriginal peoples and governments to collectively agree on a way forward. Since coming to power, the Conservative government has unilaterally decided that it will not honour the Accord. This is tantamount to taking regressive measures towards economic, social and cultural rights which violates Canada's obligations under the International Covenant on Economic, Social and Cultural Rights and CEDAW.

36. In June, Parliament adopted a private members bill that called on the government to respect the Kelowna Accord. Because private members bill cannot compel the government to spend money, the *Kelowna Accord Implementation Act* remains a largely symbolic victory.

Recommendation

37. Adequate funding should be allocated to ensure full implementation of the Kelowna Accord. This includes funding specifically focused on improving the overall socio-economic status of Aboriginal women and girls in Canada.