



**Native Women's Association of Canada's Report in Response to  
Canada's Fourth and Fifth Reports on the International Covenant on Economic,  
Social and Cultural Rights covering the period of September 1999 – December 2004**

**April 2006**

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## **I. Introduction**

The Native Women's Association of Canada (NWAC) welcomes the opportunity to provide our perspective on Canada's 4<sup>th</sup> and 5<sup>th</sup> Reports to the Committee on Economic, Social and Cultural Rights (the Committee) on Canada's compliance with International Covenant on Economic, Social and Cultural Rights (ICESCR). In particular, NWAC wishes to set out the extent to which Canada has met its obligations under the ICESCR to Indigenous women in Canada.

It is well known that Indigenous women are one of the groups in Canadian society that least enjoy the economic, social and cultural rights contained within the ICESCR, suffering from violations of these rights on a daily basis. As recently as October 2005, Canada has been criticized for its failure to address violence against Indigenous women, including its root causes such as the economic and social marginalization of Indigenous women.<sup>1</sup>

NWAC is a National Aboriginal Organization, representing the political voices of Indigenous women throughout Canada. NWAC is founded on the collective goal to enhance, promote and foster the social, economic, cultural and political well being of First Nations and Métis women within First Nations, Métis and Canadian societies. Below, we set out our concerns regarding Canada's compliance with the ICESCR, particularly in relation to Articles 1, 2, 3, 10, 11 and 12.

## **II. Article 1: Right to Self-Determination**

NWAC has two concerns regarding the right to self-determination under Article 1 of the ICESCR. The first concern relates to the lack of action taken by Canada in ratifying the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (No. 169) (the ILO Convention 169). The second concern relates to the need for Canada to play a positive role in the Open-Ended Working Group on the Optional Protocol to the ICESCR (the Working Group on the Optional Protocol). Concerns about the full and equal participation of Indigenous women in self-government agreements are addressed under the discussion of Articles 2(2) and 3 Covenant violations.

The Committee in its list of issues dated 2 December 2005 requested reasons from Canada on, *inter alia*, why it has not ratified the ILO Convention 169. As a starting point, NWAC reiterates its request for Canada to engage in full and meaningful consultation with Indigenous peoples and Representative Organizations in Canada regarding ratification of this Convention.

The right to self-determination is a right of central importance to Indigenous peoples in Canada since self-determination is necessary in order to remedy the colonial impacts

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<sup>1</sup> Human Rights Committee: Concluding Observations of the Human Rights Committee, 85<sup>th</sup> Session, 27 and 28 October 2005, CCPR/C/CAN/CO/5. [HRC Concluding Observations]

associated with the dispossession of lands, territories and resources, including the current socio-economic marginalization of Indigenous peoples. In fact, the Committee has noted the “direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands.”<sup>2</sup>

That such violations persist in a country enjoying a stable democracy, a prosperous economy and an international reputation for promotion of human rights, is a compelling illustration of the need for effective measures to ensure that international standards for the fulfillment, protection and promotion of economic, social and cultural rights are upheld.

Rights without remedies are empty rights, which is the rationale for NWAC’s previous calls for the development of a comprehensive Optional Protocol to the ICESCR applying to all rights in the Covenant, including the right to self-determination. The mandate of the Working Group on the Optional Protocol is currently under review. We are concerned that Canada has not taken a more proactive approach in ensuring the development of an Optional Protocol that is comprehensive in nature and would serve to improve the justiciability of all rights contained within the ICESCR. Rather, Canada has advocated for a narrow, non-comprehensive mandate of the developing Optional Protocol. This would have a particularly negative impact on Indigenous peoples in Canada, as it would serve to undermine the right to self-determination of Indigenous peoples under Article 1 of the ICESCR.

Some States, including Canada, have recently advocated for an approach that would limit the scope of the Optional Protocol, such as only dealing with the issue of non-discrimination of the enjoyment of social, economic and cultural rights rather than a comprehensive approach which deals with all rights contained within the ICESCR. Such an approach would have the effect of unnecessarily complicating whether a given complaint would be considered admissible, thereby creating a hierarchy of rights, giving States an opportunity to block the establishment of effective remedies to some of the rights contained within the ICESCR.

NWAC calls upon Canada to play a positive role in the Working Group on the Optional Protocol that will ensure there is an effective, comprehensive mechanism for complaints regarding the rights contained in the ICESCR. We make these specific recommendations:

- The Working Group on the Optional Protocol should be renewed with a mandate to draft an Optional Protocol to the ICESCR that contains both a Communication Procedure and an Inquiry Procedure. This will enhance the enforcement of economic, social and cultural rights, which is imperative regardless of the current status of domestic law in these areas of particular States.

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<sup>2</sup> Committee on Economic, Social and Cultural Rights: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada: 57<sup>th</sup> Session, 10/12/98. E/C.12/Add.31.

- Other procedural elements, such as an early warning/emergency procedures mechanism, interim measures to prevent irreparable or immediate harm to complainants and effective remedies and follow-up measures should be provided for within the Optional Protocol.
- All rights contained within the ICESCR (not just those contained within Part III) must be the subject of review by the Optional Protocol and its Procedures, consistent with the model of the Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women.
- To limit the scope of the Optional Protocol so that it does not apply to the right to self-determination is discriminatory and inconsistent with international law and its progressive development. It is of great importance to Indigenous peoples in Canada, and globally, that the right to self-determination be reviewable and be of equal importance to all other rights contained within the ICESCR.<sup>3</sup>
- All levels of States obligations, including those to respect, protect and fulfill the economic, social and cultural rights contained within the ICESCR, should be subject to review under the Optional Protocol and its Procedures.
- It is critical that individuals, groups of individuals and organizations be granted the authority to launch complaints for two main reasons. First, many Indigenous individuals do not have the capacity to launch complaints at the United Nations level, so in order to have greater access to enforcement mechanisms of economic, social and cultural rights under ICESCR, the flexibility for representative organizations and Indigenous governments is required. Second, often ICESCR violations are experienced at a collective level (by entire families, communities or societies), particularly where violations are the result of systemic discrimination.<sup>4</sup> For example, it is only through realization of all human rights, including economic, social and cultural rights that the root causes of violence can be eradicated. Similarly, it is only through recognition of the right to self-determination and land, resources and territories that Indigenous peoples will be able to enjoy their full human rights.

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<sup>3</sup> An approach to the mandate of the Optional Protocol that does not recognize the right to self-determination as one that is equally worth enforcement as compared to other rights contained within the ICESCR is contrary to the well-established international law principle that all human rights are universal, indivisible, interdependent and interrelated. See: Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights, Vienna, 14-25 June 1993, paragraph 5, U.N.G.A. Doc. A/CONF.127/23.

<sup>4</sup> For example, the Sisters in Spirit Initiative of NWAC is aimed at addressing the systemic causes of violence against Indigenous women, such as gendered racism and low social, political and economic status, that makes Indigenous women vulnerable to racialized, sexualized violence. For more information, see [www.sistersinspirit.ca](http://www.sistersinspirit.ca).

***Actions Required of Canada:***

Fully support the development of a comprehensive Optional Protocol to the ICESCR as proposed by the NGO Coalition for an OP-ICESCR that covers all rights contained within the ICESCR (including the right to self-determination). Individuals, groups of individuals and organizations should have standing to launch complaints under the Optional Protocol.

**III. Articles 2(2) & 3: Non-Discrimination and Equal Rights between Men and Women as they relate to Matrimonial Property Rights, Membership/Status Rules, Human Rights Legislation and Participation of Indigenous Women**

There are several areas in which neither the right to non-discrimination (for example, between non-Indigenous and Indigenous peoples in Canada and between Indigenous women and non-Indigenous women in Canada) nor the right to equality (for example, between Indigenous women and men) are not provided to Indigenous people nor to Indigenous women. These include in the area of matrimonial property rights, membership and Status under the *Indian Act*, human rights legislation and participation of Indigenous women in self-government agreements, treaties and intergovernmental agreements and policy discussions.

***Matrimonial Property Rights***

In the context of matrimonial property rights, Indigenous individuals living on-reserve do not have access to the same legislative protections as individuals living off-reserve. This has a particularly detrimental effect on Indigenous women. Indigenous women are far more likely than men to be the sole caregivers of their children. Where violence is involved lack of matrimonial property rights puts both Indigenous women and their children at greater risk for staying in an abusive environment because of a lack of alternative housing choices. Despite numerous national and international reports documenting this human rights violation, Canada has failed to make policy or legislative changes, in conjunction with Indigenous peoples, to address these inequities.

In Canada's responses to the list of issues set out by the CESCR, Canada notes that:

“...The Government Response to the Standing Committee report was tabled in the House of Commons on October 6, 2005. It indicates that the Government of Canada is continuing a collaborative process with the Native Women's Association of Canada and the Assembly of First Nations as it moves towards a legislative solution.”<sup>5</sup>

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<sup>5</sup> Canada, “List of issues to be taken up in connection with the consideration of the fourth periodic report of CANADA concerning the rights referred to in articles 1-15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.15)” (undated) at 76. [Canada's Response]

This response by Canada is highly inadequate. NWAC's Background Document provided in July 2005 for the consultation amongst Canada, NWAC and the Assembly of First Nations clearly set out NWAC's position and proposed action plan.<sup>6</sup> Given that First Nations women in Canada have lived without equal protection of matrimonial property laws for over 20 years, NWAC echoed the call by the Standing Committees for Canada to take *immediate* legislative action.<sup>7</sup> This includes a commitment of financial resources necessary to institute interim legislative measures as well as engagement in a long-term consultation process from which long term policy and legislative reforms could be determined.

Instead, Canada's Response made vague assurances of continuing a collaborative process with NWAC and AFN. Since Canada tabled its report in October 2005, this collaborative process has been focused on producing information pamphlets on the issue of unequal matrimonial property rights for First Nations individuals rather than a meaningful consultation process focusing on implementing substantive policy and legislative reforms that would result in real change in individual's lives.

The assurances made by Canada in its Response neglect to mention concrete timeframes for financial commitments necessary to consult with Indigenous peoples in a meaningful way or to obtain the free, prior and informed consent of Indigenous peoples in Canada with regard to legislative and policy changes. The result is that the status quo remains for First Nations individuals in terms of lacking legal recourse for matrimonial property rights. As noted by the Canada is in violation of its obligations under the Covenant to ensure non-discrimination and equality rights, obligations that are not subject to the limitations of progressive realization and resource constraints.

The Committee Reports acknowledged the specific impacts of this issue on the human rights of children and women and that this legislative gap exacerbates violence against women and children. This affects the economic, social and cultural rights of Indigenous women and their children, continuing to marginalize them.

We concur with the House Committee's recognition of the importance of finding solutions to this inequality that respect the inherent right to self-government held by Aboriginal nations. These solutions must advance the goal of increased sovereignty of

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<sup>6</sup> NWAC, "Discussion Paper: Matrimonial Property Rights & A Response to the Standing Senate Committee on Human Rights Report (May 2005) & the Standing Committee on Aboriginal and Northern Development Report (June 2005) Proposed Consultation Process" (Ottawa: NWAC, 2005). [Discussion Paper]

<sup>7</sup> As summarized by Canada itself in Standing Senate Committee on Human Rights, "Seventeenth Report: To Examine and Report Upon Key Legal Issues Relating to the Division of On-Reserve Matrimonial Real Property", May 2005: "The Senate Committee stresses that the issue of on-reserve matrimonial real property has been analysed sufficiently and that 'action,' not 'study', is required. The Senate Committee also emphasizes the need for the consultations of the House of Commons Committee to be carried out in a 'timely manner'. The Senate Committee states that now is the time for action – those who are affected have waited long enough and are being denied their rights under the *Canadian Charter of Rights and Freedoms*."

Indigenous peoples in Canada in a manner consistent with international human rights standards.

The *Indian Act*, originating in pre-Confederation legislation, deliberately created landholding and governance systems for Indigenous peoples designed to undermine their traditional structures and practices to the point where they could not resist assimilation. For example, the *Indian Act* deliberately barred women from a role in these debased systems. Within the context of existing First Nations mandated under the *Indian Act*, a colonial piece of legislation that is the antithesis of self-determination, it is inaccurate to assert that legislative changes to this Act that are aimed at protecting human rights will subvert self-determination.

The legislative and policy solutions to this inequality must protect both the collective and individual rights of Indigenous peoples in Canada. It is imperative that interim legislation be put in place immediately. In terms of long-term solutions, meaningful consultation with Indigenous peoples, including Indigenous women's representative groups must take place and the free, prior and informed consent of Indigenous peoples must be obtained. This is the basis for the consultation plan outlined by NWAC which is inclusive and comprehensive.<sup>8</sup>

***Actions Required of Canada:***

Implement policy and legislative changes identified in numerous national and international reports aimed at ensuring that Indigenous individuals living on-reserve have equal matrimonial property rights to those individuals living off-reserve.

Ensure the full and effective participation of Indigenous peoples, particularly representative Indigenous women's groups, in these policy and legislative reforms.

***Bill C-31: Membership and Status***

Bill C-31, which amended the *Indian Act* in 1985, ostensibly to remove discriminatory provisions of the Act related to membership and Indian status, has led to continued residual gender discrimination against First Nations women and their descendants as well as to a two-tiered status system that negatively impacts all First Nations individuals. The status and membership system encoded under Bill C-31 interferes with First Nations women's right to equality. It also interferes with First Nations individuals' right to non-discrimination because the current provisions erode the right to status and membership under the *Indian Act* of all First Nations individuals. Upon marriage to a non-status individual, a status individual loses his or her right to pass on status and membership rights to his or her descendants.

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<sup>8</sup> Discussion Paper, *supra* note 6.



Canada's Response at page 14 fails to address the concerns raised by the Committee about the discriminatory effects of Bill C-31 on Indigenous women. The report states that the second generation cut-off rule affects male and female persons equally. This is an overly simplistic and factually inaccurate characterization of the legislation. The legislative provision creates two classes of individuals, under section 6(1) and section 6(2) respectively. The descendants of those individuals classified under section 6(2) are more likely to reach the second-generation cut-off point one generation sooner than the descendants of those classified under section 6(1). First Nations women reinstated under Bill C-31 (after having been striped of status in an overtly discriminatory manner) are more likely than their male relatives to be classified under section 6(2). This is why Bill C-31 contains residual discrimination, contrary to Articles 2(2) and (3) of the Covenant. Canada has failed to provide a remedy for this violation.

***Actions Required of Canada:***

Implement policy and legislative changes that will remove the residual gender discrimination against First Nations women and their descendants and redress the current erosion of rights to membership and status under the Indian Act of all First Nations individuals.

***Human Rights Legislation***

Section 67 of the *Canadian Human Rights Act* makes the Act inapplicable to all matters governed by the *Indian Act*. The result has been that First Nations individuals and individuals living in First Nations communities have not had the protection of the CHRA or an equivalent human rights law from discrimination under the *Indian Act*. Ironically, the federal legislation designed to ensure the right to live free from discrimination for all Canadians has failed to be applied on a non-discriminatory basis, excluding from its application one sector of Canadian society, those individuals subject to the *Indian Act*, itself a colonial piece of legislation.

A recent federal government report entitled, *A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act* recommended that section 67 be repealed and that a proactive review of potential human rights violations be undertaken in consultation with First Nations, with a view to prevent any discrimination from continuing. This would provide a remedy to the continuing discrimination contained in Bill C-31 discussed above. The report states:

“Repeal of section 67 will, for the first time, allow First Nations persons to file human rights complaints with regard to provisions of the *Indian Act* and actions carried out pursuant to the *Indian Act* by the Government of Canada (as well as complaints against First Nations governments). Various provisions of the *Indian Act* invoke human rights concerns and

could be the subject of possible complaints to the Commission. This is why section 67 was enacted in the first place and also why it must be repealed.

...

Although section 12(1)(b) was repealed in 1985, concern remains that the Bill C-31 amendments themselves may not pass human rights muster. Of most concern is that women who lost status before 1995 do not have the same ability to pass status on to their children and grandchildren as do their brothers and male cousins who also married non-status individuals. The lack of any provisions dealing with matrimonial property rights, a situation severely prejudicial to First Nations women, is, as already noted, another pressing issue...

...If section 67 is repealed, the Commission will pursue such complaints to the full extent of the law.

However, the Commission would prefer that the Government take a proactive approach to preventing potential discrimination and not wait for complaints to be filed and potentially lengthy proceedings to take place. *The Commission, therefore, urges the Government, in consultation with First Nations, the Commission and other relevant bodies, to review provisions of the Indian Act and relevant policies and programs to ensure that they do not conflict with the Canadian Human Rights Act and other relevant provisions of domestic and international human rights law. Such a review should focus in particular on the impact of Bill C-31 and how membership and entitlement to status could be managed equitably for all parties.*" [Emphasis added.]<sup>9</sup>

It is commendable that Canada has completed this report on the important matter of section 67. NWAC agrees with the proposed recommendations made above. Further, in relation to long term legislative solutions, alternative models to be explored and self-government agreements, we recommend the following:

- Upon the repeal of section 67, suspend the application of the CHRA to First Nations for a transitional period of 18 months. During this time period, in conjunction with Indigenous peoples in Canada, Canada must implement an extensive consultative process with relevant National Aboriginal Organizations, including NWAC, the Assembly of First Nations and the Congress of Aboriginal Peoples as well as other community members. The purpose of the consultation is to review legislative options of an interpretative provision that will balance both individual and collective rights of Indigenous persons and peoples in a manner

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<sup>9</sup> Canada, *A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act* (Ottawa: Canadian Human Rights Commission, 2005) at 23.

consistent with existing international human rights law, including equality rights. By the end of the 18 month process, based on the outcome of the consultations, an interpretative clause must be adopted. The provision must not reinforce inequalities, particularly those based on gender, perpetuated to date by the *Indian Act*.

- The consultation process should also include a review of parallel human rights systems to be developed, implemented and monitored by representatives of all Indigenous peoples in Canada (i.e.: more inclusive than *Indian Act* defined First Nations), such as an Indigenous Human Rights Tribunal or Indigenous Human Rights Commission. These alternative systems could be considered for implementation at the same time as that of the interpretative clause (18 months) or at an identified later date (such as 30 months). Such systems could include aspects of Indigenous legal systems which should be identified through research by Indigenous representative organizations, including NWAC. Given the history of systemic gender inequalities, the full and effective participation of Indigenous women at all stages, from development to monitoring, must be ensured. Adequate resources will be required to complete this research.
- The consultation process must be carried out swiftly and should not stall the implementation of actions that would improve the human rights record of Canada immediately, such as policy reforms related to the application of the CHRA to the Government of Canada. NWAC supports the conclusion in the report, *A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act* that it is “of critical importance” to ensure “that First Nations have adequate human and financial resources to design and implement viable human rights systems”. Again, NWAC underscores the critical need for the full and effective participation of Indigenous women in such initiatives.
- Self-government agreements should include specific provisions on human rights protection and promotion in a manner consistent with international law, including principles of equality. Research on ways to incorporate Indigenous legal systems into human rights mechanisms will be of great assistance in integrating innovative human rights mechanisms into self-government agreements.

***Actions Required of Canada:***

Ensure that all Indigenous people have access to remedies for violations of their economic, social and cultural rights, including through human rights legislation. Section 67 of the CHRA should be repealed and a timely consultation process initiated with Indigenous representative organizations in Canada with the aim of developing a parallel human rights system and legislative and/or policy reforms aimed at ensuring that self-government agreements are consistent with international human rights protections, including equality, that are also culturally appropriate.

***Participation of Indigenous Women in Self-Government Agreements, Treaties and Intergovernmental Agreements and Policy Discussions***

Finally, NWAC is recognized as the national Indigenous women's voice in Canada. Throughout recent high level policy dialogues, NWAC has been given a place to provide a culturally relevant, gender based analysis. However, NWAC has not received equivalent funding to the other national Aboriginal organizations, resulting in discriminatory treatment. Further, there is no mechanism to ensure the full and effective participation of Indigenous women in self-government agreements, treaties and intergovernmental agreements dealing with such matters as employment, health, education, child welfare and other social services for Indigenous people, or for consultation on reforms to the *Indian Act*. Canada must ensure that they engage in full and meaningful consultation with all Indigenous people, including women, and ensure that free, prior and informed consent is obtained.

NWAC welcomes the adoption of the federal government's 1995 Federal Plan for Gender Equality and the 1998 Gender Equality Analysis policy by the Department of Indian and Northern Affairs as well as its strategy in 2003 led by the Women's Issues and Gender Equality Directorate in 2003. However, despite these advances, the implementation of a culturally appropriate, gender-based analysis has been lacking in significant areas of Canada's policy discussions and practices. For example, in Canada's background document to the Canada Aboriginal Peoples Roundtable Discussion on Negotiations in 2005, Aboriginal women are referred to in only one paragraph which states:

“Processes for addressing Aboriginal and treaty rights raise challenges with respect to inclusiveness. This involves cross-cutting issues related to involvement of Aboriginal women, urban Aboriginal people, non-status Indians and rural and remote communities. Overlapping rights and claims are also a significant issue. Effective mechanisms are required for addressing these matters.”<sup>10</sup>

Thus, Canada failed to take the opportunity to apply its gender-based analysis to the area of negotiations, instead choosing simply to note the need to do so in one sentence. This narrow approach results in reinforcing inequalities in the negotiations of land claims, self-government, treaties and intergovernmental agreements where Aboriginal women's voices are so badly needed.

In its Background Document to the Canada Aboriginal Peoples Roundtable Discussion on Negotiations, NWAC recommended comprehensive policy framework renewal be undertaken in the areas of self-government, land claims and treaty negotiations to ensure

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<sup>10</sup> Department of Indian Affairs and Northern Development, “Renewal of Policies and Processes for Addressing Aboriginal and Treaty Rights: Federal Background Paper for the Negotiations Sectoral Roundtable, January 12-13, 2005, Calgary, Alberta” at 13. [DIAND Negotiations]

that the perspectives of Indigenous women be adequately integrated.<sup>11</sup> We called for, *inter alia*:

“This policy framework review, along with any implementation processes and mechanisms, must involve the application of a comprehensive gender-based analysis of all aspects of land claims, self-government and Treaty negotiations. Renewal of policies to more effectively address section 35 Aboriginal and treaty rights is done, including an examination of the ways in which section 35(4) can be used to benefit Aboriginal women. This renewal is done with the active and equal participation of Inuit, Métis and First Nations women’s representative organizations to ensure that policy developments adequately reflect Aboriginal women’s needs and perspectives and fully integrate a culturally appropriate gender-based analysis.”<sup>12</sup>

Canada reports in its Response to the List of Issues that “The Government of Canada is taking steps to promote the equal participation of Aboriginal women in the negotiation of self-government and land claim (modern treaty) negotiations.”<sup>13</sup> Details on how this is being achieved would be helpful. NWAC acknowledges that the equality rights of Indigenous women are protected in self-government agreements and concomitant laws due to the application of the *Canadian Charter of Rights and Freedoms*. However, the equal participation of Indigenous women in negotiations is not guaranteed. This affects the substantive content of the agreements, including the prioritization of issues covered under such agreements. Several specific suggestions to ensure the full and effective participation of Indigenous women are made in our Background Document which include, *inter alia*:

- Build in mechanisms designed to ensure negotiations are carried out through meaningful consultation that is gendered,
- Implement programs aimed at increasing participation of Aboriginal women through funding to Aboriginal women’s representative organizations, as supported by *Gathering Strength*,
- Include Aboriginal women’s representative organizations at all policy discussions in the future.

Further, we agreed with several recommendations made by a Status of Women Canada report entitled “A Strong and Meaningful Role for First Nations Women in Governance”, including, *inter alia*:

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<sup>11</sup> Native Women’s Association of Canada, “Background Document on Aboriginal Women and Negotiations For the Canada-Aboriginal Peoples Roundtable Sectoral Follow-up Session on Negotiations” January 2005 at 6. [NWAC Negotiations]

<sup>12</sup> *Ibid* at 10.

<sup>13</sup> Canada’s Response, *supra* note 5 at 19.

- Ensure the full and equal participation of First Nations women in self-government and treaty negotiations. In British Columbia, this could be done through the B.C. Treaty Commission as a requirement for negotiations. The federal government when entering into self-government negotiations could, as a prerequisite for negotiations, insist that there be women representatives on the negotiating teams.
- Include gender equality provisions in self-government agreements, treaties, First Nations charters/constitutions.
- Have *all* participants in treaty and self-government negotiations (federal, provincial and First Nations negotiators) use a gender lens.
- Include accountability frameworks for First Nations governments that embody principles of transparency, disclosure, redress and gender equality into First Nations governing structures (pursuant to the *Indian Act* or self-government agreements and treaties).
- Explore the possibility of national or regional human rights panels.<sup>14</sup>
- Investigate the issues related to establishing a First Nations ombudsperson.<sup>15</sup>

#### ***Actions Required of Canada:***

Uphold the principles of consultation and free, prior and informed consent. In so doing, Canada must ensure the full and effective participation of Indigenous women in all levels and forms of decision-making affecting the rights and well-being of Indigenous peoples. This includes providing equitable funding of Indigenous women's organizations to ensure the full and effective participation of Indigenous women in the negotiation of self-government agreements, treaties and intergovernmental agreements dealing with such matters as employment, health, education, child welfare and other social services for Indigenous people and on reforms to the *Indian Act*.

#### **Article 10: Protection of the Family, Mother and Child**

Indigenous women in Canada suffer from disproportionately high rates of violence, particularly sexualized, racialized violence. This violence is fueled by the social and economic marginalization of Indigenous women, the perpetuation of degrading racist and sexist stereotypes of Indigenous women and public indifference to their welfare and safety. Across Canada, pervasive sexualized, racialized violence against Indigenous women has led to alarmingly high numbers of missing and murdered Indigenous women in Canada.

<sup>14</sup> This could be one avenue for recourse to ensure the protection of the most vulnerable populations (women, persons with disabilities, two-spirited people, etc.) within the group.

<sup>15</sup> NWAC Negotiations, *supra* note 11 at 8-9.

There are no comprehensive figures available on the number of Indigenous women who have been murdered or gone missing, but NWAC, based on research and dialogue with communities across Canada, estimates that at least 500 Indigenous women, and likely many more, have fallen victim to sexualized, racialized violence in the last two decades. Furthermore, at least three-quarters of Indigenous women have been the victims of family violence, and the overall mortality rate due to violence is three times higher for Indigenous women than non-Indigenous women, a rate that rises to five times higher for Indigenous women aged 25 to 44, compared to non-Indigenous women.<sup>16</sup> Sadly, there are few Indigenous families in Canada who have not lost a sister, a mother, a daughter or a cousin.

In Canada, the extreme, brutal, sexualized violence against Indigenous women has been well-documented by Amnesty International in its recent report, *Stolen Sisters: A Human Response to Discrimination and Violence Against Indigenous Women in Canada*<sup>17</sup> which documents the pervasiveness of the human rights problem of violence against Aboriginal women in Canada. In its report, *Stolen Sisters*, Amnesty International describes the systemic nature of this type of violence against Indigenous women:

“...Generations of Indigenous women and girls have been dispossessed by government policies. Many now face desperate circumstances in Canadian towns and cities, a situation compounded by sexist stereotypes and racist attitudes toward Indigenous women and girls and general indifference to their welfare and safety. The result has been far too many Indigenous women and girls placed in harm’s way, denied adequate protection of the law, and marginalized in a way that allows some men to get away with carrying out violent crimes against them.”<sup>18</sup>

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, in his report on his Mission to Canada called for redress of this situation: “That particular attention be paid by specialized institutions to the abuse and violence of Aboriginal women and girls, particularly in the urban environment.”<sup>19</sup>

NWAC is pleased with Canada’s recent steps to address violence against Aboriginal women, through the Family Violence Initiative and recently, in its announcement to fund the NWAC’s Sisters In Spirit Campaign to address racialized, sexualized violence against

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<sup>16</sup> Health Canada, Women’s Health Bureau, “The Health of Aboriginal Women”, online: [http://www.hc-sc.gc.ca/english/women/facts\\_issues/facts\\_aborig.htm](http://www.hc-sc.gc.ca/english/women/facts_issues/facts_aborig.htm).

<sup>17</sup> Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, (Ottawa: Amnesty International Canada, 2004).

<sup>18</sup> Amnesty International, *Stolen Sisters: Discrimination and violence against Indigenous women in Canada: A Summary of Amnesty International’s Concerns*, (Ottawa: Amnesty International Canada, 2004) at 9. [*Stolen Sisters*]

<sup>19</sup>U.N. Commission on Human Rights, Human Rights and Indigenous Issues: *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Addendum, Mission to Canada, submitted pursuant to Commission resolution 2004/62, E/CN.4/2005/88/Add.3, 2 December 2004* at 34.

Aboriginal women in Canada. NWAC cautions, however, that Canada must address the underlying socio-economic status issues that lead Aboriginal women to be vulnerable to violence, including poverty, health status, housing, economic opportunities, etc. if substantive changes over the long term are to result. These conditions, discussed further below under Articles 11 and 12, impair the protection of Indigenous women and their families under Article 10.

The need to examine systemic causes of violence is recognized by the UN Commission on Human Rights in the Elimination of violence against women Human Rights Resolution 2005/41 which states:

“17. *Stresses* that States have an affirmative duty to promote and protect the human rights and fundamental freedoms of women and girls and must exercise due diligence to prevent, investigate and punish all acts of violence against women and girls, and calls upon States:

...

(g) To address the specific circumstances facing indigenous women and girls in relation to gender-based violence, especially sexual violence, arising from multiple, intersecting and aggravated forms of discrimination, including racism, paying particular attention to the structural causes of violence;”<sup>20</sup>

This requires attention to the overall causes and consequences of violence, related to socio-economic conditions, gendered discrimination and the lack of recognition of land and collective rights of Indigenous peoples, all of which have a negative impact on Indigenous women’s ability to live free from violence. In order to remedy the current violations to Article 10 and other related rights under the Covenant, Canada must make systemic changes aimed at reducing violence against Aboriginal women. Further, access to justice must be ensured in order to prevent the continued negative effects of discrimination and violence within and outside of the justice system.

Canada has failed to adequately address the overall socio-economic marginalization of Indigenous women and their children that leads to their increased vulnerability to systemic forms of violence.

Access to justice remains limited to Indigenous women and serves to their further marginalization.<sup>21</sup> Amnesty International’s *Stolen Sisters* report identifies many

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<sup>20</sup> UN Commission on Human Rights, Resolution on the Elimination of Violence against Women, 61<sup>st</sup> Session, 20 April 2005, E.CN.4/RES/2005/41.

<sup>21</sup> See Canada, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, (Ottawa: Canadian Human Rights Commission, 2003) which also makes the argument that there is a duty of Canada to take positive measures under the *Canadian Human Rights Act* to protect federally sentenced women, particularly Aboriginal women. At 16, the report states, “Women, particularly Aboriginal women, are vulnerable not only because they lack power in the prison context, but also because of the economic, social and political realities of women’s lives. This is particularly true for Aboriginal women who, as the data in Chapter 1 reveal, are being incarcerated in increasing numbers. The disadvantage they experience is multi-layered both in the society and in the correctional system. From this



recommendations aimed at remedying discrimination facing Indigenous women who are victims of violence, including calling on Canadian officials to, *inter alia*:

- Identify and implement appropriate and effective protocols for action of missing person cases consistent with the specific risks to Indigenous women and girls.
- Provide adequate, sustained, multi-year funding to culturally appropriate services, such as shelters and counseling for Indigenous women and girls, need to prevent violence against Indigenous women...
- Increase recruitment of Indigenous police officers, particularly Indigenous women. As well, ensure adequate training for all police, prosecutors and judges on issues of violence against Indigenous women in a range of settings including family violence, child sexual exploitation and violence against women in the sex trade.
- Implement outstanding recommendations of the Royal Commission on Aboriginal Peoples which address poverty and social marginalization of Indigenous Peoples in Canada, as has repeatedly been urged by United Nations human rights treaty bodies.<sup>22</sup>

Discrimination and other barriers make justice systems unresponsive to the needs of Indigenous women, whether as victims or as offenders. The link between violence and involvement with the criminal justice system cannot be underestimated. Violence leads Indigenous women in Canada more vulnerable to involvement with the justice system, as identified by a recent report by the Canadian Human Rights Commission, which found that of the federally sentenced women in Canada, Indigenous women were more likely to have experienced violence in the past:

“... Aboriginal women offenders made up a disproportionate share of the abused; 90% of Aboriginal women in prison reported having been physically abused, compared with 68% of federally sentenced women.”<sup>23</sup>

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perspective, the fiduciary duty on the Government of Canada augments the human rights obligations of the Correctional Service to these vulnerable groups.” [references omitted.] [*Protecting Their Rights*]

<sup>22</sup> These recommendations and several other sound recommendations are contained in *Stolen Sisters*, *supra* note 18 at 22-23.

<sup>23</sup> *Protecting Their Rights*, *supra* note 21 at 7. This review provides a systemic review of reforms necessary to ensure that the equality rights based on gender, race and disability are upheld in Canadian correctional services, consistent with human rights protected by the *Canadian Human Rights Act*.

### **Actions Required of Canada:**

Gather adequate statistical information on violence against Indigenous women.

“[F]ully address the root causes of this phenomenon, including the economic and social marginalisation of Aboriginal women.”<sup>24</sup>

Ensure effective access to justice, including ensuring that police have adequate training and resources to respond effectively and without discrimination to reports of all missing Indigenous women.

### **Article 11: The Right to an Adequate Standard of Living**

Indigenous women and their families, regardless of residency, suffer from high rates of homelessness and overall low standards of living. This is related to the effects of colonization and continued discrimination based on gender and race. Canada has recently engaged in extensive policy dialogues with Indigenous peoples in Canada, including the Canada-Aboriginal Peoples Roundtable Discussions, the Cabinet Retreat in May 2005 and a First Ministers Meeting in November 2005 in Kelowna with Indigenous leaders. A policy accord was signed between NWAC and Canada at the Cabinet Retreat and a Kelowna Agreement was reached between Canada, the provincial and territorial governments as well as the five national Aboriginal organizations. However, the government of Canada has not allocated the financial resources required to ensure that the commitments contained within the Kelowna Agreement are honoured. The recent budget announced on April 5, 2006 did not provide any of the resources needed for the implementation of the Kelowna Agreement, raising concern that the commitments will not be honoured.

One of several areas where Canada fails to meet its obligations under Article 11 to provide for a right to an adequate standard of living is in the area of housing for Indigenous peoples, particularly to Indigenous women.

For example, First Nations women’s disadvantages are clearly evidenced in the on-reserve housing context. In 1996 – a year after the federal gender-based analysis policy (referred to above as the Gender Equality Analysis policy) was adopted – the Government of Canada adopted a new on-reserve housing policy.<sup>25</sup> At the time, a large body of knowledge and information already existed about the influences, practices and ongoing discriminatory outcomes of over 100 years of the non-Indigenous-based, *Indian*

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<sup>24</sup> HRC Concluding Observations, *supra* note 1 at para. 23. The Human Rights Committee also calls for effective access to justice for Indigenous women.

<sup>25</sup> Canada, *Guidelines for the Development of First Nations Housing Proposals* (Ottawa: Indian and Northern Affairs Canada, July 1996), online: INAC, [http://www.ainc-inac.gc.ca/ps/hsg/cih/hs/guide\\_e.pdf](http://www.ainc-inac.gc.ca/ps/hsg/cih/hs/guide_e.pdf) (Guidelines).

*Act*-imposed, male-dominated band council system.<sup>26</sup> Yet nowhere in the housing policy guidelines is gender equality either implicitly or explicitly addressed. This is the case despite a suggested list of specifics for First Nation communities to address in developing their housing proposals under the ‘new’ policy, and, that mandatory and secondary assessment criteria used by Indian and Northern Affairs Canada (INAC) for approving First Nation housing proposals are identified.<sup>27</sup> This must change. INAC should require that all housing proposals indicate how First Nations women’s interests will be addressed, and specifically, require the integration of equality of outcome measures between men and women. In other words, a gender-based analysis should be one of the mandatory criteria for housing proposal approval. In fact, this should be a mandatory criterion for all proposals involving federal jurisdiction.

Currently on reserves, a severe shortage of at least 8,500 units was documented in 2001 by the federal government and in 2003 the Auditor General (AG) of Canada noted that figure as well as the need for renovations to 44% of existing housing stock on reserves. The AG also noted the projection that 4,500 new on-reserve households will be formed every year for the next ten years; however, current funding levels anticipate supporting the construction of only 2,600 homes per year.<sup>28</sup>

The housing situation for off-reserve Indigenous people is also pressing. See for example, the National Aboriginal Housing Association’s (NAHA) *National Non-Reserve Aboriginal Housing Strategy* released in 2004, which indicates Indigenous peoples experience the most pressing housing needs. A majority (71%) of Indigenous people live off reserves and of their households, the majority of families (75%) live in urban areas; this figure is further broken down as a large number of the families living in large metropolitan cities (41%), followed by non-metropolitan cities (31%) and rural areas (28%).<sup>29</sup>

The National Coalition on Housing and Homelessness (NCHH) reported in 2001 that “after fifty years of significant and regular spending by the federal and provincial governments on new, affordable housing,” since 1994 their “combined housing budgets ...[had] *decreased* by half a billion dollars annually.”<sup>30</sup> The coalition documented a shortage of rental housing, increases in average market rents, steady losses in the

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<sup>26</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples*, (Ottawa: Canada Communications Group, 1996) especially “Housing” and “Women’s Perspectives” (RCAP), and *Report of the Aboriginal Justice Inquiry of Manitoba*, especially Vol. 1: The Justice System and Aboriginal People (Winnipeg: Queen’s Printer, 1991) “Aboriginal Women”, ch. 13 (AJIM).

<sup>27</sup> Discussion Paper, *supra* note 8 at 6.

<sup>28</sup> Report of the Auditor-General of Canada to the House of Commons—April 2003: Federal Government Support to First Nations—Housing on Reserves, c. 6 at 3. (AG)

<sup>29</sup> National Aboriginal Housing Association, *A New Beginning: The National Non-Reserve Aboriginal Housing Strategy*, March 2004, at 5 and 9, online: National Aboriginal Housing Association, [http://www.aboriginalhousing.org/The\\_National\\_Non-Reserve\\_Aboriginal\\_Housing\\_Strategy](http://www.aboriginalhousing.org/The_National_Non-Reserve_Aboriginal_Housing_Strategy). [NAHA]

<sup>30</sup> The National Coalition on Housing and Homelessness, *Pre-Budget Submission to the Standing Committee on Finance*, September 6, 2001 at 4, online: Ontario Non-Profit Housing Association, [http://www.onpha.on.ca/affordable\\_housing\\_initiatives/fight\\_resources/pdf/NCHH\\_prebudget.pdf](http://www.onpha.on.ca/affordable_housing_initiatives/fight_resources/pdf/NCHH_prebudget.pdf). (At the time, the 25-member coalition represented seven Aboriginal peoples’ organizations, including the National Aboriginal Housing Association.) [NCHH]

numbers of existing rental housing units, declining or stagnant tenant incomes and wealth, sharp increases in tenant affordability problems, and a disproportionate representation of Indigenous Canadians among the homeless.<sup>31</sup>

As the NCHH's submission suggested, funding is inextricably linked to affordable housing supply. In 2004, the federal government stated its commitment to a 'quality of life' agenda for Indigenous peoples and its recent unification of homelessness programs, the Supporting Community Partnerships Initiative and housing programs under one Minister of Housing. Despite these commitments, the on-the-ground situation promises to change little since funding falls far short of the "One Percent [of the federal budget] Solution", or approximately \$2 billion annually which housing experts report is required for sufficient affordable housing.<sup>32</sup> Instead of \$2 billion annually, the Government of Canada has currently committed \$1 billion over five years for its Affordable Housing Initiative.<sup>33</sup> Nonetheless, NAHA, regarding off-reserve housing for Indigenous peoples, recommends that "an allocation of 7.5% of the current federal capital budget (\$1 billion) to provide \$75 million (with matched cost sharing) could facilitate construction of 2,200 units annually" which would "fully eliminate problems of severe rent burdens... over the next decade."<sup>34</sup>

Poverty is a fact of life for many Indigenous women who remain at the lowest income levels of the population and spend the highest proportion of their income on housing. Regarding income, NAHA notes that:

"Aboriginal renter households receive just 85% of the level of income among Non-Aboriginals ... So overall, and consistently across jurisdictions Aboriginal households have lower incomes and thus a lower capacity to pay rent than Non-Aboriginal households."<sup>35</sup>

Furthermore, one in four Aboriginal renters pays "more than the accepted norm of 30% while 15% pay more than 50%."<sup>36</sup> NWAC's anecdotal knowledge suggests that empirical studies identifying gender-specific housing factors would confirm Aboriginal women make up the highest proportion of the 30 to 50% and greater than 50% of income to rent categories.

The inter-relationship between poverty levels and housing needs cannot be underestimated. This is highlighted by the Canadian Renewal and Housing Association

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<sup>31</sup> *Ibid* at 5-6.

<sup>32</sup> "Liberals promised \$1.5 billion over five years in the election campaign – that's not enough but it's another step forward" reports the Toronto Disaster Relief Committee in its Summer 2004 issue, online: Toronto Disaster Relief Committee, <http://www.tdrc.net/DisasterPostSummer2004.pdf>. See also, NAHA, at 23-24 regarding the portions of funding required for Aboriginal-specific non-reserve housing.

<sup>33</sup> Canada's Budget Plan, Chapter 4 (Budget 2004), online: Department of Finance Canada, <http://www.fin.gc.ca/budget04/bp/bpc4de.htm>.

<sup>34</sup> NAHA, *supra* note 21 at 24.

<sup>35</sup> NAHA, *supra* note 21 at 14-15.

<sup>36</sup> *Ibid* at 11.

(CHRA) in a presentation to the PRI-SSHRC-sponsored Roundtable on Housing Research, Policy and Practice in the Context of Poverty and Exclusion, which states:

“Aboriginal peoples['] ... economic resources are so significantly lower than the rest of Canadian households that existing programs will not work for Aboriginal populations. New ways of designing programs with Aboriginal aspirations in mind will have to emerge in order to allow for an equitable level of participation.”<sup>37</sup>

Citing a finding in a study of social, private and co-op housing in Winnipeg, the CHRA quoted the following which is applicable to the housing policy circumstances and Indigenous women:

“Participatory decision-making processes involving women with low incomes from diverse backgrounds should be incorporated at every level of housing policy and programming, from the setting [of] priorities for new housing developments, to the every day governance of housing complexes. Participatory decision-making bodies should be adequately resourced, including access to training and supports such as child and dependent care allowances.”<sup>38</sup>

In terms of shelter programs for Aboriginal women that provide immediate housing when women are leaving abusive relationships, these need to be better funded to provide for more new shelters and capital upkeep and maintenance of existing shelters. Aboriginal women’s vulnerability to becoming a single parent and/or the victim of spousal violence needs to be anticipated, accounted for, addressed and accommodated to achieve positive, equitable outcomes in all existing and new housing policies and programs. Priority wait listing and placement of women who are victims of violence must be further fostered and followed in housing practice by all levels of government and authorities involved in housing.

The severe limitations on Indigenous women’s right to an adequate standard of living outline above have not been adequately addressed by Canada in their 4<sup>th</sup> or 5<sup>th</sup> Reports to the Committee. This is a critical human rights violation that needs to be immediately addressed.

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<sup>37</sup> Sharon Chisholm, Presentation to the PRI-SSHRC Sponsored Roundtable on Housing Research, Policy and Practice in the Context of Poverty and Exclusion (Ottawa, Canadian Housing Renewal Association, November 4, 2004), online: <http://www.chra-achru.ca/english/view.asp?x=654&id=89>.

<sup>38</sup> *Ibid.*

**Actions Required of Canada:**

Implement existing agreements between Canada and national Aboriginal organizations aimed at ensuring an adequate standard of living is attained for Indigenous peoples in Canada.

Make concrete improvements to housing and other socio-economic conditions that will ensure the right to an adequate standard of living for Indigenous peoples in Canada, regardless of residency. In particular, address the housing crisis facing Indigenous peoples both on and off reserve.

**Article 12: The Right to Health**

All aspects of the right to health of Indigenous peoples, particularly women, in Canada have yet to be realized to the extent possible by Canada. The life expectancy rates of Indigenous women are well below that of the mainstream female population. Furthermore, Indigenous women, because of continuing oppression, abuse, discrimination, and poor socio-economic status, are more apt to experience illness and disease associated with these conditions, including diabetes, certain cancers, cardiovascular diseases, disabilities, addictions, sexually-transmitted infections, and depression. As a result, their quality of life is negatively affected. Furthermore, without appropriate political and social intervention, their life expectancy rate will remain low. There is an urgent need, therefore, to provide First Nations, Métis and Inuit women equitable access to health care services. This must be done in a gender sensitive, culturally relevant manner. Health needs to be re-defined from its traditional meaning to encapsulate the perspectives of Indigenous peoples, and in particular, of Indigenous women. Accordingly, health must be inclusive of holistic notions of well-being, as well as traditional knowledge, medicines and healing practices.

The Government of Canada's announcement in September 2004 of \$700 million in new Aboriginal health funding represents a solid commitment to improving the health status of Aboriginal peoples. Confirmation that this funding commitment will be maintained by Canada is imperative. If this announcement is not honoured, advancing the right to health will be severely undermined. This funding is to be spent on three areas: an Aboriginal Health Transition Fund (\$200 Million), Aboriginal Health Human Resources (\$100 million) and critical areas, including diabetes, youth suicide, maternal and child care (\$400 million). Attention will need to be considered in each of these areas in how to best meet the needs of Indigenous women. It will be essential for a culturally relevant gender-based analysis to be applied by all involved in the implementation of the Aboriginal Blueprint. In past policy discussions, such as the Canada-Aboriginal Peoples Roundtable Sectoral Discussion on Health, this analysis was lacking from other National Aboriginal Organizations and the Canadian government.

As part of the Blueprint discussions at the national level, the Native Women's Association of Canada has made the following recommendations:

1. Design, develop, implement and evaluate the Aboriginal Women's Health and Healing Action Plan.

Rationale: A priority area for investment is the development of an Aboriginal Women's Health and Healing Action Plan in full partnership with the Native Women's Association of Canada (NWAC), within a federal, provincial, territorial and Aboriginal Peoples' process. This Action Plan, which would be inclusive of funding, would delineate implementation strategies responsive to the needs of all Aboriginal women and girls, their families and communities.

2. Organize Women-specific Preparatory Tables.

Rationale: The participation and representation of Aboriginal women is integral to all processes, from consultation to negotiation to implementation to evaluation. We propose that Women-specific Preparatory Tables be held prior to upcoming federal, provincial, territorial and Aboriginal Peoples' processes. This will provide an opportunity for the gender experts among Aboriginal Peoples and government to apply a culturally relevant gender-based analysis (GBA) to plans/recommendations to include in further negotiations.

3. Design an Aboriginal Women's Health Reporting Framework.

Rationale: An Aboriginal Women's Health Reporting Framework is needed to collect data to evaluate progress and monitor outcomes of a culturally relevant gender-based analysis for all health matters. The need for disaggregated data on the basis of gender within First Nations, Inuit and Métis categories is critical to all aspects of the research process. It also relates to issues of accountability, ownership and control.

4. Develop and Implement a Wholistic Health and Well-Being Model.

Rationale: The Blueprint's Action Agenda must be based on a wholistic health and well-being model to ensure that Aboriginal Peoples' diverse needs are met. This will ensure that the broad determinants of health are adequately considered. Traditional knowledge, medicines and healing practices of Aboriginal women and Aboriginal Peoples generally must be included. In developing and implementing this plan, it is important to understand the interconnection between health and other factors, such as health and violence, health and education, health and income, health and geography etc. Consideration of this inter-relationship will lead to long-term sustainability of programs.

Throughout all phases of the Aboriginal Health Blueprint, there must be adequate acknowledgement of health issues specific to Indigenous women. It must be guaranteed that the specific health needs, beliefs, and practices of all Indigenous women, i.e. First Nations, Inuit, Métis, non-status, women with disabilities, youth, and two-spirited

persons are respected throughout the design, development, implementation and evaluation of the Blueprint process.

To meet the above objectives, the Aboriginal Health Blueprint framework must consider and include specific policies, programs and services to address women's health issues, including violence against women, breast cancer, gynecologic cancers, cardiovascular disease, diabetes, chronic pain, arthritis, depression, dementia, Alzheimer's disease, eating disorders, peri- and post-menopausal health, sexual and reproductive health and rights, contraception, gender difference in bacterial sexually transmitted infections, women and HIV/AIDS, factors associated with women's medication use, disabilities, and maternal and child health. Research indicates that many of the health conditions listed above are linked to poor diet, obesity, inactivity, alcohol and substance abuse, unsafe sexual practices, smoking, depression, being single parents, traumatic childhood events, low self-esteem, poor socioeconomic status, less formal education, and high risk lifestyles, such as gang involvement.

Most Indigenous women in Canada are experiencing and living in situations that give rise to and perpetuate poor health conditions. Without intervention, these conditions will deteriorate even further, resulting in higher demands on an already strained healthcare system. The well-documented poorer health status of Indigenous peoples is linked to inequities in health determinants, including "lower quality housing, poorer physical environment, lower educational levels, lower socioeconomic status, fewer employment opportunities and weaker community infrastructure."<sup>39</sup> Indigenous women are at higher risk for alcohol and substance abuse, yet only represent 40% of the Indigenous treatment population in alcohol treatment centres. This is related to factors including lack of access to appropriate, women-centred treatment services, the impact of violence against Indigenous women (as discussed above) and a lack of access to child care services.<sup>40</sup> Over-medicalization and over-prescription of anti-depressants to Indigenous women are also health concerns.

A recent study by the Canadian Human Rights Commission on the Canadian prison system indicates that one key difference between male and female offenders is the higher prevalence rates of mental illness, self-abuse (such as slashing and cutting) and suicide attempts in women.<sup>41</sup> Given the disproportionate number of Indigenous women in federal prisons (they make up 29% of the prison population, although they make up only 3% of the general Canadian female population), these high suicide, mental illness and self-harm rates are alarming.<sup>42</sup>

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<sup>39</sup> Society of Obstetricians and Gynecologists of Canada (SOGC), "SOGC Policy Statement: A Guide for Health Care Professionals Working With Aboriginal Peoples", Journal SOGC, Vol. 2, April 2001 at 3.

<sup>40</sup> Aboriginal Women with Disabilities, "Alcohol Abuse", online: <<http://www.schoolnet.ca/aboriginal/disable6/alcoh-e.html>>.

<sup>41</sup> *Protecting Their Rights*, *supra* note 21 at 8. See also: Fillmore et al., "Prairie Women, Violence and Self-Harm" (The Elizabeth Fry Society of Manitoba, 2000).

<sup>42</sup> *Ibid* at 6.



Other health concerns of Indigenous women include higher rates of diabetes among Indigenous women compared to Indigenous men, higher rates of gestational diabetes compared to non-Indigenous women and higher rates of death caused by cervical cancer (for example, six times the national average for First Nations women in British Columbia, and three times as common among Inuit women in Nunavik compared to the general population).<sup>43</sup> Indigenous women suffer from higher rates of other Sexually Transmitted Infections (STIs) such as Chlamydia and gonorrhea, sometimes up to 10 times higher than the national average.<sup>44</sup>

Canadian Indigenous women are almost three times more likely to have AIDS than non-Indigenous women (23.1% versus 8.2%).<sup>45</sup> New HIV infections among Indigenous women have increased over the past twenty years, making up 50% of new HIV cases, compared to only 16% of the non-Indigenous population.<sup>46</sup> Increasingly, young Indigenous women between the ages of 15-29 years of age are contracting HIV.<sup>47</sup> The two main modes of transmission of HIV for Indigenous women are: injection drug use (64.9%) and heterosexual contact (30.9%).<sup>48</sup> The alarming growth in HIV/AIDS among Indigenous women calls for gender-specifically, culturally appropriate responses. Canada's Response regarding HIV/AIDS (at pages 87-89) does not ensure that a culturally relevant *and* gender specific approach will be taken to the HIV/AIDS projects and programmes funded by Canada.

Although the Aboriginal Blueprint is a positive step in the right direction, given the breadth of the problem in advancing the right to health for Indigenous women, a much more comprehensive approach to advancing the right to health of Indigenous women and their families must be taken by Canada.<sup>49</sup>

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<sup>43</sup> *Ibid* at 8.

<sup>44</sup> Audrey Steenbeek, "Empowering Health Promotion: A holistic Approach in Preventing Sexually Transmitted Infections Among First Nations and Inuit Adolescents in Canada", 22 (3) *Journal of Holistic Nursing*, 2004 at 255.

<sup>45</sup> Kevin Barlow, Canadian Aboriginal AIDS Network, Media Release March 5 2004, "Aboriginal Women Continue to Face Major Challenges, as International Women's Day Approaches" March 5, 2004."

<sup>46</sup> Tracey Prentice, *HIV/AIDS and Aboriginal Women, Children and Families*, (Ottawa: The Canadian Aboriginal AIDS Network, 2004) at 3.

<sup>47</sup> *Ibid*.

<sup>48</sup> *Ibid* referring to Marene Gatali and Chris Archibald, "Women and HIV" in *Women's Health Surveillance Report* (Ottawa: Minister of Health Canada, 2003).

<sup>49</sup> For many Indigenous peoples in Canada, the right to health is protected by section 35 of the *Constitution Act, 1982*, as an Aboriginal and Treaty right.

***Actions Required of Canada:***

Provide First Nations, Métis and Inuit women equitable access to health care services. This must be done in a gender-specific, culturally appropriate manner with the full and effective participation of Indigenous women at all stages.

Make resources available to address all issues that negatively impact on Indigenous women's well-being, including poverty, lack of housing, sexualized, racialized violence, employment, education, etc.

Implement the Aboriginal Health Blueprint Objectives identified by NWAC in its Companion Document to the Cabinet Retreat of May 2005.

## **Recommendations**

Actions required of Canada to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights in relation to Indigenous women and their families include the following:

### *Article 1: Right to Self-Determination*

1. Fully support the development of a comprehensive Optional Protocol to the ICESCR as proposed by the NGO Coalition for an OP-ICESCR that covers all rights contained within the ICESCR (including the right to self-determination). Individuals, groups of individuals and organizations should have standing to launch complaints under the Optional Protocol.

### *Articles 2(2) and 3: Non-Discrimination and Equal Rights between Men and Women as they relate to Matrimonial Property Rights, Membership/Status Rules, Human Rights Legislation and Participation of Indigenous Women*

#### *Matrimonial Property Rights*

2. Implement policy and legislative changes identified in numerous national and international reports aimed at ensuring that Indigenous individuals living on-reserve have equal matrimonial property rights to those individuals living off-reserve.
3. Ensure the full and effective participation of Indigenous peoples, particularly representative Indigenous women's groups, in these policy and legislative reforms.

#### *Bill C-31: Membership and Status*

4. Implement policy and legislative changes that will remove the residual gender discrimination against First Nations women and their descendants and redress the current erosion of rights to membership and status under the *Indian Act* of all First Nations individuals.

#### *Human Rights Legislation*

5. Ensure that all Indigenous people have access to remedies for violations of their economic, social and cultural rights, including through human rights legislation. Section 67 of the *Canadian Human Rights Act* should be repealed and a timely consultation process initiated with Indigenous representative organizations in Canada with the aim of developing a parallel human rights system and legislative and/or policy reforms aimed at ensuring that self-government agreements are consistent with international human rights protections, including equality, that are also culturally appropriate.

*Participation of Indigenous Women in Self-Government Agreements, Treaties and Intergovernmental Agreements and Policy Discussions*

6. Uphold the principles of consultation and free, prior and informed consent. In so doing, Canada must ensure the full and effective participation of Indigenous women in all levels and forms of decision-making affecting the rights and well-being of Indigenous peoples. This includes providing equitable funding of Indigenous women's organizations to ensure the full and effective participation of Indigenous women in the negotiation of self-government agreements, treaties and intergovernmental agreements dealing with such matters as employment, health, education, child welfare and other social services for Indigenous people and on reforms to the *Indian Act*.

*Article 10: Protection of the Family, Mother and Child*

7. Gather adequate statistical information on violence against Indigenous women.
8. “[F]ully address the root causes of this phenomenon, including the economic and social marginalisation of Aboriginal women.”<sup>50</sup>
9. Ensure effective access to justice, including ensuring that police have adequate training and resources to respond effectively and without discrimination to reports of all missing Indigenous women.

*Article 11: The Right to an Adequate Standard of Living*

10. Implement existing agreements between Canada and national Aboriginal organizations aimed at ensuring an adequate standard of living is attained for Indigenous peoples in Canada.
11. Make concrete improvements to housing and other socio-economic conditions that will ensure the right to an adequate standard of living for Indigenous peoples in Canada, regardless of residency. In particular, address the housing crisis facing Indigenous peoples both on and off reserve.

*Article 12: The Right to Health*

12. Provide First Nations, Métis and Inuit women equitable access to health care services. This must be done in a gender-specific, culturally appropriate manner with the full and effective participation of Indigenous women at all stages.

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<sup>50</sup> HRC Concluding Observations, *supra* note 1 at para. 23.

13. Make resources available to address all issues that negatively impact on Indigenous women's well-being, including poverty, lack of housing, sexualized, racialized violence, employment, education, etc.

14. Implement the Aboriginal Health Blueprint Objectives identified by NWAC in its Companion Document to the Cabinet Retreat of May 2005.