



Reclaiming Our Way of Being

Matrimonial Real Property Solutions Position Paper

January 2007

Acknowledgements

President Beverley Jacobs, on behalf of the Board of Directors and staff of the Native Women's Association of Canada wishes to extend a heartfelt thanks to all the youth, women, and men who shared their stories and who assisted in finding solutions during the Matrimonial Real Property Solutions initiative. She expresses appreciation for their strength, knowledge, and passion, and appreciates their knowledge of the responsibilities towards the healthiness and well-being of their communities. She also appreciates the role that everyone has played in ensuring that we are all planning and thinking about our future generations.

NWAC acknowledges that many individuals faced personal risk because of their decision to participate, yet they chose to do so in order to assist in the identification of solutions that will benefit all Aboriginal people.

President Jacobs acknowledges the advice of the Elders who have participated in the planning and implementation of this consultation process. She thanks the Elders who came together and provided guidance at the various sessions which formed this consultation process.

President Jacobs acknowledges the support of the Aboriginal community. She extends appreciation to the individuals who provided advice through their participation in focus groups, writing surveys, calling in, as well as participating on steering committees, advisory groups, and board of directors. She also appreciates the hard work and commitment of NWAC's dedicated staff and consultants who ensured that the words and spirit of the participants was included in this report.

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Executive Summary

The issue of Matrimonial Real Property (MRP) has been awaiting resolution for over 20 years. The Native Women's Association of Canada was pleased to participate in this consultation and consensus building process in partnership with the Assembly of First Nations and Indian and Northern Affairs Canada (INAC) that was aimed at identifying solutions for MRP issues.

The Native Women's Association of Canada (NWAC) used a variety of means to gather information and heard the ideas of Aboriginal women about the solutions they believed would be most appropriate and useful in resolving MRP. The information gathered from Aboriginal people who participated in these sessions is the basis for this position paper.

The vision, principles and solutions are grounded in the voices of the participants in the MRP Solutions initiative who shared their thoughts and ideas for solutions with NWAC. Each solution is associated with short, medium, and long-term recommendations.

Vision:

Our vision for this process is "*Reclaiming our way of being*": a balance of healthy individuals, families, communities, and nations that are grounded in our traditional teachings and knowledge.

Principles

Our principles specifically relate to:

- Women and their role in this process and in the community;
- Aboriginal children and their well-being;
- Elders, and their importance as carriers of traditional knowledge;
- Governance and its role in healthy communities;
- Remoteness, and the additional challenges faced by semi-remote, remote and isolated communities;
- The responsibility of the federal government for past discriminatory practices.

Solutions

The solutions generated through our consultation process have been grouped into six broad themes:

1. Intergenerational impacts of colonization
2. Violence
3. Justice
4. Accessibility of supports
5. Communication and education
6. Legislative change

The next step is to achieve consensus with our partners on a way forward which will enable the implementation of solutions that will result in benefits for all Aboriginal individuals, families, communities, and nations.

Introduction

NWAC Mission

The Native Women's Association of Canada is founded on the collective goal to enhance, promote, and foster the social, economic, cultural, and political well-being of Aboriginal women in First Nations and Canadian society. NWAC helps to empower women by being involved in developing and changing legislation which affects them, and by involving them in the development and delivery of programs promoting equality for Aboriginal women.

Matrimonial Real Property (MRP)

The *Indian Act* does not contain provisions governing on reserve "matrimonial real property" which is a term that includes a couple's home or land that they live on, or benefit from, during their marriage or marital relationship. In 1986, the Supreme Court of Canada ruled that provincial and territorial laws on matrimonial real property do not apply to reserve land. These decisions created a gap in the law which has had serious consequences, especially for Aboriginal women.

Couples who agree on how to deal with their matrimonial real property do not have a comprehensive legal framework within which they can give effect to their intentions. Where couples do not agree, there is no mechanism for resolving their disputes. Without legal protection, women experiencing the breakdown of their marital relationship, experiencing violence at home, or dealing with the death of their partner often lose their homes on reserve. This makes it difficult for them to maintain regular contact with their extended family and friends, and results in the loss of their contributions to the well-being of their community, now and in the future.

MRP Solutions Initiative

Activities

NWAC has long recognized that the lack of matrimonial real property law has negative consequences for Aboriginal women and children. NWAC has been advocating since the 1990's for a solution to rectify this problem. NWAC welcomed the opportunity to work in collaboration with the Assembly of First Nations (AFN) and Indian and Northern Affairs Canada (INAC) to find solutions to the inequitable access to matrimonial property rights by Aboriginal women and men.

The goals established for NWAC's participation in this process included:

- Ensuring that the unique needs and interests of Aboriginal women are reflected throughout the entire consultation process;
- Working towards a respectful balance between the collective and individual human rights of Aboriginal women and the communities they belong to;
- Seeking the best possible solutions to facilitate meaningful access to MRP protections for women and children living on reserve.

Throughout this process, NWAC has been committed to ensuring that solutions come from the individuals who have been affected by the current legislative gap. NWAC ensured that these individuals had every opportunity to participate and share solutions and recommendations in a safe and accessible way. NWAC is in full support of good governance, and supports a balance of collective and individual rights of peoples and persons in the communities where they live and belong.

The MRP Solutions initiative created a safe and comfortable environment where First Nations women shared their thoughts, ideas, and most importantly their solutions for matrimonial real property. These solutions came from their own experiences, knowledge and culture. NWAC believes that it was critically important for the voices of women to be heard and therefore conducted a process that was inclusive and empowering for women. The activities undertaken during this initiative allowed NWAC to bring the women's contributions forward to the next phase where we will seek to establish consensus with our partners on the best solutions.

Timelines

On June 20, 2006, the Minister of INAC appointed Wendy Grant John as the ministerial representative to lead the process along and seek consensus on a solution to MRP.

On September 29, 2006, NWAC, AFN, and INAC jointly announced the beginning of their Canada-wide consultation process.

NWAC conducted the information gathering activities that form the basis for this report between September 29, 2006 and January 29, 2007.

Vision and Principles

The overwhelming response of Aboriginal women was essential to the NWAC MRP Solutions initiative. The following vision and principles were directly developed from the words of the women. As NWAC moves forward to achieve consensus on solutions with our partners, this vision and these principles will guide our process of reclaiming our way of being.

Vision

Reclaiming Our Way of Being: a balance of healthy individuals, families, communities, and nations that are grounded in our traditional teachings and knowledge.

Principles:

Process

Our stories are who we are. The voices and stories of Aboriginal women have been the central source of our solutions to MRP.

Women

Women and children have always been integral to the traditional laws and values of their nations.

Women are honoured as the givers of life.

Women provide leadership in rebuilding our communities. Their skills and knowledge give them an essential and equal role in the community.

Children

Children are a sacred gift from the Creator.

Children have a right to be raised within their family, their culture, and their community, and to live in a healthy and safe environment.

The well-being of children is best met by their parents finding solutions that consider the needs of the children first.

Men

Men are our equal partners.

Men provide leadership in rebuilding our communities. Their skills and knowledge give them an essential and equal role in the community.

Men contribute to and benefit from strong and respectful families.

Elders

Elders are the carriers of our traditional knowledge, and through their guidance and oral teachings they will help us reclaim our way of being.

Governance

Good governance and accountability is critical for healthy and viable communities.

Communities

First Nations communities are diverse.

While First Nations peoples face common issues, those communities located in remote or isolated locations may experience unique challenges, which must be considered in the MRP solutions.

The role of the federal government

While many of the solutions are community based, it is imperative to understand that these community problems arose as a result of federal legislation and policies or lack thereof that discriminated against Aboriginal peoples and persons.

The following section outlines specific concerns that were identified by participants. Each is briefly described below, followed by the identification of long, medium and short term solutions that will result in achieving our vision.

Re-claiming our Way of Being: Identifying Solutions

NWAC believes that solutions to the MRP issue must come from the people themselves. Throughout the MRP Solutions initiative, NWAC invited participants to speak of their experiences, the barriers they faced, and what they needed to move forward. The solutions identified incorporate the principles acknowledged at the beginning of this paper as well as the issues and concerns that were raised by the participants. These solutions encompass judicial and legal changes, which may be rooted in Indigenous traditional teachings and processes, as well as social and well-being concerns that must be addressed to support Aboriginal women, children and families.

The solutions generated through the MRP Solutions initiative have been grouped into six broad themes: Intergenerational impacts of colonization, violence, justice, accessibility of supports, communication and education, and legislative change. Each theme is briefly described below; the description is followed by the short, medium and long term recommendations. A summary of the recommendation can be found in Appendix A.

Intergenerational Impacts of Colonization

The *Indian Act* itself was created on government assimilation and cultural genocidal policies. These assimilation mechanisms such as the intentional placement of children into residential schools and “the 60’s Scoop” (referring to the unjust mass removal of Aboriginal children into the child welfare system) have created intergenerational effects on the individuals and families who experienced them, and are often mentioned as contributors to the break down of matrimonial relationships. The fundamental Indigenous teachings about relationships between women and men and the roles of each in society, as well as the responsibilities each had to the other, to their extended families, to their communities, and to Creation were replaced by notions which flowed from larger society, where women were viewed very differently.

Short Term Solutions

Federal legislation must include a retroactive clause to financially compensate Aboriginal women and their descendents who suffered a loss as a result of the *Indian Act* legislation

Too often women have had to leave their communities to protect themselves and their families from violence, and have also suffered losses due to the lack of protections for Aboriginal women under the *Indian Act*. Minimizing the intergenerational impact of colonization is an important objective as women are already marginalized within the greater Canadian society.

Compensation will alleviate some of the personal challenges and financial difficulties faced by women and their descendants who suffered as a result of family breakdown and loss of real property due to the lack of protections afforded women under the *Indian Act*. This lack of protections goes beyond the simple lack of mechanisms to address the loss of matrimonial real property after the breakdown of a relationship, but extends to all the impacts of colonialism that all Aboriginal women have suffered.

Membership and citizenship legislation and policies must be revised to provide choice for women and their descendents regarding band membership

Currently, band membership is ascribed: individuals are assigned membership under regulations that do not always take their personal wishes, needs or interests into account. Throughout the Solutions initiative participants suggested a number of alternatives to band membership policies and emphasized that the ability to make a personal choice was important. These choices included being able to establish dual membership for the children of a marriage where the parents came from different First Nations, and women being able to choose whether to transfer her membership upon marriage, separation, divorce, or the death of a spouse.

These choices will enable Aboriginal women to make decisions in the best interests of themselves and their families.

The Aboriginal Healing Foundation and all Aboriginal healing and wellness programs must be expanded and adequately resourced to better address intergenerational impacts of colonization

Colonization and its impacts have had a strong and negative impact on individuals, families, and communities. Despite this history, the women who participated in the MRP Solutions initiative believed that the community could heal, in part through the use of holistic and culturally-appropriate programs such as those described above.

“Healing starts with me, then my family, and then my community. The healthier we are, the more stable we are, the stronger.”

Healing and wellness programs need to be further expanded to assist in this process of strengthening individuals and communities. The agencies and organizations that deliver these programs must be adequately funded so that programs may be delivered to all Aboriginal people in need. In particular, the programs must be accessible to those who live in remote and isolated communities, where distance and lack of local infrastructure makes access to programs more difficult.

Medium Term Solutions

A mechanism is developed to implement compensation for the lack of protections for women and their descendants including disenfranchisement from First Nation communities and loss of language, culture and identity as a result of MRP concerns

A community-based mechanism needs to be developed to implement the compensation process described above in the short term solutions, which is created to compensate women and their descendants for the lack of protections, including disenfranchisement from First Nations communities, and the loss of language, culture, and identity as a result of MRP.

Gender based impact analysis of the Aboriginal Healing Foundation and healing and wellness programs be resourced for improved effectiveness for Aboriginal women, children, and families

NWAC has heard the call from participants to increase and to expand Aboriginal healing and wellness programs, in order to facilitate the healing that must take place in communities.

NWAC is taking this call one step further; recommending that a gender-based impact analysis be conducted of these programs. The previous work undertaken by NWAC has shown that Aboriginal men and women have suffered different experiences throughout the colonization process because of their gender. European values did not respect women nor their contributions to society in the way Aboriginal cultures did. As a result, the role of Aboriginal women was disrespected in Aboriginal communities, along with the honour they once had.

A gender-based impact analysis will ensure that healing and wellness programs are addressing and meeting the needs of both Aboriginal men and women. Through this analysis, programs will be able to see where there programs are having positive outcomes, and if necessary, modify programming to take into consideration the distinct experiences of Aboriginal men and women, and where appropriate, address gender-specific issues.

Repatriation programs are developed and resourced for communities to embrace their members

The assimilation policies of the Federal government has resulted in the loss of status, band membership and identity for many First Nations people. Enfranchisement and “the Sixties Scoop” are two well-known examples of assimilationist policies. A less acknowledged example is the loss of status or band membership of Aboriginal women who marry a non-status individual or a status individual from another band.

The passing of Bill C-31 which reinstated Indian status to many individuals, created confusion and pressure for Aboriginal individuals and communities. First Nations were required to accept people back into bands and communities without adequate resources to do so. Many individuals who were finally able to return to their communities found that they were greeted as strangers. One participant commented:

“...there is a repercussion still today in our community ... We have women that came back home, still homeless so to speak because they are not honouring that Bill C-31. So those kinds of things are still doing that control type of stuff against the women and children we might as well say.”

Currently First Nations communities and other Aboriginal communities lack the resources and funds to establish programs to help repatriate those women and their descendents. Education programs for community members and individuals returning to communities are critical in the repatriation effort. These activities will result in positive changes, as described by one participant who stated that:

“... you feel like there is an evolution going on and growth happening in leaps and bounds but it starts with the children. As soon as we started working with the children everything started changing, and women as well as their men become engaged when they see something good for their children and now you're not on opposing sides...”

Long Term Solutions

Break the cycle of intergenerational impacts of colonization and create the space to re-instill pride in Aboriginal identity and improve self-esteem

Throughout the MRP Solutions initiative the theme of colonization was raised, especially in terms of how it affects Aboriginal women and their lack of human rights. The intergenerational impact is that the colonial process impacts one generation of women after another. Traumatic events and harsh treatment, which are the consequences of the colonization process, which were experienced by grandmothers, continue to affect their daughters, granddaughters, and future generations. One participant described the effects of colonization as:

“...we became non-persons. We couldn’t vote. Our women couldn’t vote. Our women had no say whatsoever.”

There was general consensus amongst the Aboriginal women who participated in the sessions that colonization was a causal factor for a number of related difficulties and issues on reserves. The process of colonization covered a number of interlinked actions, including the introduction of the *Indian Act*, the imposition of Band Council government and the use of assimilative mechanisms such as residential schools. Participants advised NWAC that:

“...it’s about who we are in our community. It’s about what we want to accomplish. It’s about the sharing of our life history, so our leaders, whoever they may be, can take that and put it into the language that needs to be looked over for the legislation...”

“It’s not colonization that moves me about in my community, it’s my values and my beliefs that makes me decide what I want to decide in my decision making.”

Women and their descendants will gain redress for the lack of protections they experienced under the Indian Act

Participants clearly identified federal government legislation and specifically the *Indian Act* as a contributor to the devaluation of women in First Nations communities. One participant described:

“...the racism, the apartheid notions and the discrimination within the guts of the Indian Act.”

Almost every woman who described her experience with MRP included information about the losses she experienced, and women generally felt that there was a need for revisions of discriminatory legislation such as the *Indian Act*. The provision of redress for the lack of protections will enable women to work towards breaking the cycle of intergenerational abuse by providing them with the tools and resources they need to take action.

Violence

Through the MRP Solutions initiative and previous work undertaken, NWAC has established that violence against Aboriginal women in all its forms is the single most important issue that confronts us. The issue of systemic and structural violence against Aboriginal women is compounded by a lack of understanding, sensitivity, and action from community members, service providers, and society in general.

NWAC recognizes that violence against Aboriginal women takes many forms, including violence in the home and in intimate relationships, political silencing, and racialized,

sexualized violence on the streets. Statistics Canada reports that Aboriginal women are more than three times more likely to be victims of spousal violence than the rest of women in Canada.

Through the Solutions initiative process, NWAC has repeatedly heard that the cycle of violence must be broken, and that this must be done through the development of healing and wellness programs. Also, NWAC has heard and acknowledges that these healing and wellness programs must include all men and women, adults and children, and the abused and the abuser.

Participants also made it clear that while First Nations communities must immediately begin the process of healing themselves, the federal government, particularly the Department of Indian and Northern Affairs, must acknowledge the negative impacts that its racist and assimilative policies have had on generations of Aboriginal individuals, families, communities and nations. In addition, INAC has a due diligence to commit resources to address the negative impacts their policies have had on Aboriginal peoples and persons.

Short Term Solutions

NWAC is provided with resources to develop an effective national strategy to stop violence against Aboriginal women, children and families that contributes to matrimonial breakdown

The specific needs of Aboriginal communities must be considered when addressing violence. Because of racist and sexist legislation, Aboriginal people face a type of violence not experienced by the larger Canadian population. The need for action to end violence against women was called for time and again throughout the consultation process.

While there was not a specific request made by an individual participant for a national strategy, the solutions the women articulated can be best achieved through such a strategy. The nature of NWAC's work makes it an ideal apparatus to develop an effective national strategy to stop the violence against Aboriginal women and children that contributes to matrimonial breakdown.

Implement enforcement orders

Many participants talked about the lack of policing in First Nations communities, as well as the absence of policies or procedures to be followed in the event of a domestic dispute. In order to ensure the safety and well-being of Aboriginal women and children, orders made under the provisions of family and criminal law must be enforced. Too often, women spoke of situations in which they had appealed to law enforcement personnel for assistance, but were unable to get help. One participant said she was:

“...very concerned about the enforcement. Even if we get something big,

wonderful, all encompassing beautiful document that's going to help us forever, how do you enforce it, especially in the isolated communities? Hey, you've got a gun at your head and there's no police around you, what do you do? You take off and you leave. So I mean the enforcement to me has to be well thought out and we have to have the cooperation of the justice systems in this."

The reasons underpinning this lack of enforcement action vary: they may include a lack of knowledge about the enforcement of restraining or other orders on reserve, a lack of capacity to provide personnel who can ensure enforcement, or a perception often based on real experiences that these concerns are of a lower priority than other demands on their time and resources.

Increased transitional housing for women, children and families

When a woman is unable to remain in her marital home, due to the breakdown of her marriage or due to concerns for her safety if she remains in the home, she requires assistance and immediate shelter. One way that this right to safety and shelter can be met is through the provision of transitional housing, or similarly related safe house networks.

A recurring recommendation made by participants was that additional, appropriate transitional housing for women, children, and families should be made available immediately. This would allow women to access the short and medium term supports that would assist them in making healthy choices about their next steps following the end of their relationships. One woman commented that:

"When my marriage broke down I felt like I had no where to go and no one to guide me."

There is a need for transitional housing that is accessible to women who live in remote or isolated areas: they report that they are often unable to access the programs and the supports available at these sites due to a lack of transportation, the cost of transportation, or eligibility barriers. One participant commented that:

"There should be some type of transitional houses on reserves ... this would enable members to stay in their communities."

Clearly, the provision of transitional housing on reserve is not yet sufficient to meet the needs of women and children experiencing the loss of their marital home due to a relationship breakdown.

Formalize and recognize the role of Aboriginal women's organizations as an official stakeholder in policy and program design and initiatives

Women who participated in the Solutions initiative consistently identified the need for women's voices to be heard. They frequently identified the importance of women being involved in all steps to find solutions, and spoke of the power of women working together

to find solutions. NWAC believes that the work done by women at the grassroots level can be assisted by Aboriginal women's organizations, especially if those organizations have a formal, recognized position as stakeholders in the policy and program design initiatives.

Medium Term Solutions

Subsidized and affordable housing be provided in a safe and healthy community

Participants in the National Consultation process warned that the present housing shortage exacerbates the issues associated with MRP. Lack of housing has been identified as a reason for women staying in abusive relationships. Therefore subsidized and affordable housing provided in a safe and healthy community must be made a priority, both on and off reserve for Aboriginal women and children. This is clearly illustrated in a comment made by a participant on the issue of housing:

“Certainly we need more services on reserve but for a woman who needs to make the choice for safety reasons; you know there needs to be services and supports elsewhere as well. So I don't think it should be an either/or. Options are great because you can meet your own particular need.”

Impact assessment to evaluate the impacts and gaps of existing programs and services which address violence, including shelters and transition houses and to provide additional resources where needed

In all input channels of the Solutions initiative, participants called for increased resources for housing, transition housing, shelters, and other support services. To respond to this call for action, NWAC suggests that impact assessments be conducted on existing family violence related programs.

This impact assessment will measure the effectiveness of programs and services and will indicate where additional resources should be provided to those programs demonstrating additional needs. One outcome of the MRP Solutions initiative has been to increase the knowledge and the awareness of Aboriginal women about MRP and related issues. NWAC anticipates that this increased level of knowledge will result in a larger number of women requesting access to programs and services, which will lead to greater voicing of demands that must be met.

Investigate promising practices for developing healthy communities

In addition, an initiative to investigate promising practices for developing healthy communities should be conducted. The end result will provide all communities with resource tools to move their communities down the healing path. A participant expressed the following thought:

“I would like to see a way to collect a history of our practices. Do some research into our practices and this would involve going to our old people, finding out what they remember and documenting it and taking that information and sharing it with community members. Share the awareness...”

Provide transitional housing for men

The idea of providing transitional housing for men during times of marital difficulty was also raised during the Solutions initiative. In the event of family violence, participants suggested that enabling the women and children to remain in the home, by providing an alternate space for the man, would be less disruptive to the family unit. Elders spoke of traditional approaches that followed this practice, saying:

“... he is asked to leave because that is her home and that's her womb and that's her children. That's natural law.

Creating transitional houses for men would bring the added benefit of increasing their access to the programs and the supports that are usually delivered through these sites. These include counseling, personal supports and referrals to other services that could aid men in resolving the issues that led them to the transition house. This solution would therefore benefit men through the provision of temporary accommodation and access to services, while benefiting women and children by enabling the marital home to continue to be a safe space for them. One participant reminded the group of the impacts of violence on the children, stating that:

“We know about the cycle of violence and all of that so that if children, you know, if we can help the children in this process, then I think that will help in the coming years, decades and generations. That's all.”

Long Term Solutions

Violence is unacceptable

For over 32 years, the Native Women's Association of Canada has taken the position that violence in any form is unacceptable. NWAC has always advocated the right to live free from violence will allow Aboriginal communities to thrive, and allow all community members to reclaim their ways of being. Communities free of violence foster trust among their membership and re-instill pride in their peoples.

Communities utilize a collective culturally-relevant approach to resolving conflict

Traditionally, First Nations peoples had a collective responsibility for the well-being of the community. This responsibility included providing assistance to community members

who require help to resolve conflicts, including those between partners. One participant stated:

“...if it takes a community to raise a child then it takes a community to bring that family, bring it together, [to] help.”

The use of a collective, culturally relevant approach to resolving conflict by communities will result in the fair and equitable treatment of both partners in finding solutions to MRP issues. This often includes gender-specific solutions that honour the specific roles played by women.

Implement or expand the application of promising practices for developing healthy communities

The results of the investigation of promising practices that is recommended as a medium term solution will allow for the implementation or expansion of the practices. We believe the further application of these best practices will aid in the further development of healthy communities.

Justice

Justice, access to legal services, and enforcement of court orders were common themes raised by participants throughout the MRP Solutions initiative process. Participants also discussed issues around policing and protection services, as well as access to legal aid and legal professionals knowledgeable on MRP issues. The solutions recommended below will provide First Nations communities with the opportunity to enhance their delivery of justice programs and ensure the protection of women and children. These solutions will increase access to justice programs and services for Aboriginal women and families who have been negatively impacted by MRP issues.

Short Term Solutions

Improve access for Aboriginal women to judicial processes which should take into consideration the unique needs of semi-remote, remote, and isolated communities

The lack of supports and infrastructure for women faced with issues related to MRP was a re-occurring theme expressed throughout the MRP Solutions initiative. Over and over, NWAC heard the frustrations of many Aboriginal women who tried to access judicial processes, but were unsuccessful due to barriers such as finances, remoteness, and lack of services. The barriers to judicial processes can be prohibitive and often lead to women staying in unhealthy and abusive relationships.

Accessing legal advice is a costly endeavour. Participants described how the expenses associated with even simple legal processes place them out of reach for many Aboriginal women and their children, who face the highest rates of poverty over any other population in Canada.

NWAC also heard situations of Aboriginal women who fell through the gaps of legal aid because they were employed. And while these women were unable to access legal aid due to their income, their wages were not sufficient enough to cover the associated costs.

“To be eligible for legal aid, I would have to quit my job.”

A further barrier to have access to any judicial processes is the remoteness of many First Nations communities in Canada. Distance is a barrier for women living in remote or isolated communities. With no services in the communities, Aboriginal women who wish to access judicial processes are forced to travel outside of their communities. And once again, the burden of the cost of travel usually falls on the women. One participant commented:

“A lot of times these women have to leave the communities to come into urban cities and urban towns to access the family judicial courts”

Also, the difficulties associated with this travel to access justice often result in women deciding not to attempt to access justice because of the difficulties, or having this outcome imposed on them by default.

In response to the issues identified above, participants felt that access to legal aid and to advice in First Nations communities would help alleviate some of the issues surrounding MRP.

“They have legal aid available in the cities and we should have access to it. There needs to be legal aid support within communities, even if there are two lawyers per community. Every reserve has a lawyer for their land entitlements...”

The justice system must enforce court orders, Band bylaws, and other legal orders.

Participants in the national MRP Solutions initiative also commented that there is not enough policing that deals with matrimonial real property as a means of enforcing maintenance issues. This leads to ineffective enactment and enforcement of court ordered payments. Most see on reserve policing as inadequate. This issue is clearly illustrated by one woman’s concern:

“. . . when proper legal processes are taken they too are often powerless and not worth the paper they are written on. For instance there is not enough policing that deals with matrimonial real property as a means of enforcing maintenance issues. This leads to ineffective enactment and enforcement of court ordered payments. Most see on reserve policing as inadequate. Many speak of the fact there is little regard or sensitivity for women’s issues.”

Development of multi-staged systems of Aboriginal mediation or other appropriate Aboriginal systems and practices for justice/decision making under MRP.

Participants consistently called for the creation of an independent body to act on the needs of First Nations people for justice, especially for women. This body is envisioned as one that would use Aboriginal systems, languages, and cultures to achieve sound and appropriate solutions.

Participants suggested alternate methods that could be used to achieve these results, such as:

“That these ombudsman people would hear the cases and on the merits adjudicate the cases and I think that would be fairer for all parties concerned, especially in the case of children.”

Another approach would be to establish an independent Aboriginal women’s representative to protect and promote matrimonial property rights and to establish a specialized First Nations tribunals.

Assessment and evaluation of the impact of MRP measures implemented under First Nations Land Management Act (FNLMA)

Some participants were aware that First Nations communities are implementing MRP Codes under the provisions of the *First Nations Land Management Act*. There is considerable interest in this process, especially in the identification of transferable best practices that are appropriate for other First Nations. Unfortunately, there was also an evident lack of information about the *FNLMA* experiences to date of those First Nations engaged in this process. Information on the status of this initiative is not reaching Aboriginal women at the community level.

The evaluation could include several features. An outline of the challenges and opportunities inherent in implementing MRP codes under this legislation would assist in determining whether current resource levels are sufficient, and what capacity challenges need to be met. A review of the outcomes and impacts that have resulted from the MRP codes that have been implemented to date would provide information about best practices and unintended consequences that would be of value to other First Nations that are developing MRP codes. The completion of a gender based analysis of MRP codes completed to date would enable First Nations communities and INAC to assess how well the requirement that these codes not discriminate on the basis of sex is being met. This evaluation should be planned and conducted as quickly as possible, so that valuable information is not lost through the passage of time. This information will result in improvements in the safety and well-being of women and their families, and could be shared among all First Nations. This process must involve the full participation of Aboriginal women.

Medium Term Solutions

That legal professionals and the justice system receive training regarding on reserve Aboriginal rights issues

Many participants discussed situations in which they sought legal help during the breakdown of their matrimonial relationship but were unable to access such support due to the lack of knowledge of MRP issues by legal professionals. One participant expressed the following:

“In my case the lawyer didn’t know the reserve land issues and rights of Native people.”

Aboriginal women must have access to informed legal advice from professionals knowledgeable on the issues of MRP, as well as First Nations law and the inherent rights of Aboriginal peoples. The training that will achieve this goal should be conducted for all legal professionals and associated positions. In addition, knowledgeable First Nations individuals and organizations should be involved in all stages of this training initiative. This will enhance the content and delivery of the training.

Long Term Solutions

Implementation of a community-based, culturally-appropriate Aboriginal conflict or dispute resolution system by First Nation communities

The employment of culturally appropriate mechanisms best facilitates the process of finding meaningful ways to equitable resolution to matrimonial real property conflicts. The implementation of a community-based and culturally appropriate Aboriginal Alternate Dispute Resolution System by First Nation communities means the fair and equitable treatment in the division of matrimonial real property. This is consistent with the traditional practice of the community being collectively responsible for the well-being of the community and individuals, including supporting healthy marriages:

“So dispute resolution is one way, and so give it a thought. It’s almost like a sentencing circle; it’s almost like that within the community. If it takes a community to raise a child, then it takes a community to bring that family, you know bring it together.”

Accessibility of Supports

The concept of accessibility to supports and programs encompasses several levels of meaning. The primary issue expressed by participants was that one consequence of MRP is that the accessibility of supports and programs decreases following the breakdown of the marriage or the relationship. Other issues related to the accessibility of supports expressed by participants during the Solutions initiative included geographic location, eligibility criteria, and band membership.

Short Term Solutions

Increase the funding of programs to support Aboriginal women and children to prepare them for healthy relationships and to support them during the breakdown of matrimonial relationships

Participants described being unable to access programs and services following the dissolution of their marriage or partnership because space was not available, because programs had been discontinued or reduced, or because of eligibility criteria unrelated to the need for service, such as minimum or maximum age restrictions.

Women expressed concerns about the availability of programs and services in general, as well as the levels of assistance provided by these programs. They recognized that accessibility is unequal across the country, due to the division of responsibility for providing programs and services, as well as differing provincial and territorial policies regarding eligibility and funding levels for supports.

An increase in the levels of funding for programs and services supporting Aboriginal women and children would allow for the elimination of barriers to access and enable all women needing programs and supports to get the help that they need.

Ensure that Aboriginal women can access programs and supports both on and off reserve, including those living in semi-remote, remote, and isolated communities

Women who are unable to resolve a MRP situation on reserve frequently move off reserve to access housing because they cannot find alternate safe and appropriate housing on reserve. As a direct consequence they become ineligible to receive supports or programs delivered through the Band Council. This is because access to these supports and programs is limited to members who reside on reserve. The spouse who moves is immediately disadvantaged compared to the spouse who remains on reserve.

Women who participated in the MRP Solutions initiative process repeatedly alluded to this loss of access to supports and programs delivered through the Band Administration. At one session, a participant described how:

“...once you leave the reserve as a treaty status woman, once you leave the reserve, the money stays for education, housing, all the needs, all the funding that goes for your per capita to the reserve stays there. It does not follow you. Then I’ve got to dress up my children, pay for school supplies because I live off reserve, I don’t get any help from my band....”

Another issue related to accessibility was described by women who had married men from another First Nation community. Although the practices associated with the registration of membership are changing, there are still issues related to the existence and

the nature of membership from one First Nation to another. Women who do not have membership in their partner's First Nation may not be able to access supports or programs following a relationship breakdown, even if they continue to live on that First Nation's land. There are also situations where the mother and children have different First Nations memberships. This may create accessibility issues for the children as well as for their mother.

What we've started to see now is that we cannot provide services to some of our children on the reserve because they are not status under the legislation of Bill C31. So when we're talking about matrimonial real property, in terms of where and who has responsibility for these children ... it's going to start conflicting within the community because ... we have some of our population saying it's for status only, they're not wanting to recognize the impacts of Bill C31

Women living in semi-remote, remote, or isolated communities were unable to gain access to programs or supports such as Legal Aid, transition housing, and court dates as well. In some cases, these supports or programs are only available at certain times of the year, or on a limited schedule throughout the year. Other supports or services are only accessible if the woman is able to travel a greater distance than is commonly required in the southern urban centers. The ability to even complete such travel may be severely limited for women who live in remote communities, due to the high cost, limited schedules, and inclement weather conditions. The funding formulas used for programs and supports should also recognize and address the increased costs associated with providing services in remote or isolated communities.

Developing solutions that address accessibility will benefit all Aboriginal people. In the short term, policies and eligibility requirements must be evaluated to determine what systemic barriers to access are entrenched in the design of programs and services. These barriers, whether geographic or linked to other design criteria, such as age restrictions or residency, must be challenged and changed.

Medium Term Solutions

Develop a mechanism to provide a continuum of services for transitional ongoing support for Aboriginal women and children

There will be challenges associated with the design and development of a mechanism to enable the provision of a continuum of services for transitional, ongoing support for Aboriginal women and children. Although many First Nations deliver similar menus of programs and supports, the differences between them in terms of membership, economic base, community health and proximity to urban centers suggests that a flexible, adaptive approach will be necessary.

Long Term Solutions

Aboriginal women and children are able to access their benefits under the Indian Act regardless of their residency

The situation described above does not have to exist. Aboriginal women who are experiencing MRP issues do not have to lose access to programs and supports. One participant at a consultation session stated that in her community:

“...we looked after everybody the same. ... So we don't really abide by the department's rules. By us doing that though, we run into problems with our self-government agreement because the programs are only available to status people. They're not available to non-status. So, the First Nation carries a lot of the load there.”

This long-term solution to MRP would utilize a rights-based approach that would enable women and children to access their treaty, membership, Aboriginal rights and equality regardless of their residency. This approach would result in women being able to access programs and supports delivered through their Band Council based on their need for these services, rather than being denied such supports because of their place of residence.

Communication and Education

The MRP Solution initiative brought to light the lack of knowledge of MRP issues and the rights of Aboriginal women. Participant comments from the sessions reflect the recognition that Aboriginal women need to understand the issues that affect them in their daily lives. The comment below is representative of many Aboriginal women in Canada, who face barriers to their well-being on a daily basis but are not aware of the underlying factors:

“I was just looking at the grassroots level of education, because I'm just here, there are a couple of us but there is so many women at home right now today that have no clue, don't understand what this is all about and from the grassroots level we should have more education, consultation or something important from now before it changes.”

Along with education, participants identified communication as an important tool to ensure that women are informed on MRP and related issues. There were calls for access to forums or avenues to raise awareness of issues that affect women. Participants identified opportunities for raising awareness of MRP and women's issues such as women's councils at the community levels and band or community meetings in which time on the agenda may be devoted to addressing and raising awareness of women's issues. It was evident that participants strongly believed that communication and education are critical to the well-being of Aboriginal women.

Short Term Solutions

Develop, implement and resource an ongoing facilitation and communication process to increase the understanding of Aboriginal women and communities on MRP rights, policies and processes.

The Solutions initiative highlighted participants' lack of knowledge around issues related to MRP. NWAC repeatedly heard the call for more information and education, primarily around MRP, as a way of empowering Aboriginal women. The education of all individuals involved in the MRP process is important; topics should include the MRP process itself, the rights of Aboriginal women, and traditional teachings and knowledge. This increased understanding would assist women such as the participants who commented that:

“I should have been able to stay in my community with my kids and should have had access to information from the community. I needed information regarding educational opportunities and social services.”

“Women need to be better informed and aware of their rights and options.”

The provision of ongoing facilitation and communications that support education and information-sharing on MRP was seen both as a way of empowering Aboriginal women as well as assisting communities to move forward. Participants called upon NWAC to be resourced so that they may provide leadership on this recommendation:

“NWAC should have tool kits (communications, materials, financial and person resources) ready for communities to use. The reasons for a split up aren't the focus here. Division of assets, fair treatment and kids are.”

Medium Term Solutions

Establish mandatory federal/provincial/territorial policies for funding and implementation of Aboriginal Studies curriculum

The participants in the Solutions initiative repeatedly called for First Nations people to improve their knowledge of traditional ways of being. Learning is closely linked with the formal education system, where youth learn values and beliefs premised on the mainstream Canadian society. This imposition of a different belief system on Aboriginal children can act to continue colonialist belief systems. As one participant suggests:

“It is important to educate ourselves to protect our spiritual, physical, mental and emotional rights.”

Implementing a school curriculum which allows young people to learn about their rights and traditional ways will help to improve the likelihood that these young people will not have to grow up in a biased, patriarchal society as their mothers and grandmothers did. The creation of an Aboriginal Studies curriculum that rectifies the lack of Aboriginal content in the current school curriculum would benefit all Aboriginal children. A participant stated that:

“Because INAC funded school systems on reserve, a stipulation of the funding should include that children be taught about treaties, matrimonial laws, Indian Acts, Bill C-31, and local by-laws.”

The development and implementation of this Aboriginal Studies curriculum must be done by Aboriginal people.

Provide additional resources for education and upgrading training to increase employability of Aboriginal women to enable them to rebuild their families, communities and nations including the need to change eligibility requirements such as restrictive funding age limits

Many participants expressed a need for education or training that would enable them to obtain employment and be self-sufficient in terms of providing for themselves and their children. One participant stated that:

“Certainly training needs to be an issue. If we are going to try and implement something in community, there needs to be training when you look at how much investment people put into property, you need to have people who understand what investment means.”

The void of knowledge of matrimonial real property and the rights of women is dramatic. A way of rectifying this issue is through an educational process. There is a dire need to educate Aboriginal women about the process, their specific rights and the mechanisms which are required to make it function effectively. As one participant stated:

“I should have been able to stay in my community with my kids and should have had access to information from the community. I needed information regarding educational opportunities and social services. A lack of education for women in First Nations communities is a result of nepotism. Band Council families are typically first to access educational funding.”

Create a special fund/program specifically for women following marriage breakdown for education, training, economic development, and small business development with no eligibility barriers

Throughout the Solutions initiative, participants discussed eligibility barriers to various supports that they faced. Participants who had experienced marital breakdowns and found

themselves thrown into the role as single mothers, found it difficult to access any supports, other than education funds. Training, economic development, and small business funds were usually unavailable to them because many of those programs target youth under the age of thirty.

In the event of marital breakdowns, single mothers wishing to enhance their skills had no other option than to attend post-secondary education. Child care funds are difficult to access or are insufficient, and if a single mother chooses to return to school, she must carry the burden on her own.

It was recommended by participants that a specific pool of funding for training supports be set aside specifically for women who have experienced the breakdown of a marriage. Specifically noted was the need for childcare for those single mothers who wish to access training, but require support to do so.

Long Term Solutions

Individuals, families, communities, and nations will have resources and rights-based knowledge to build healthy, viable, and sustainable communities

Communication plays a critical role in helping to build, healthy, viable and sustainable communities. First Nations needs to communicate effectively, with one another, with the government and other partners about their needs and resources which are necessary to create healthy loving communities. Communication is also a viable asset when seeking solution that will help rectify communal issues, an example which was addressed through out the consultation process was that of human rights, particularly those of women. Resources are needed to help restore a sense of equality between women and men. The Aboriginal women could regain their rightful place as equal partners within the community. Programs and resources are needed which will have focus and draw the interest of community members, so that they may see this as a positive means of rebuilding. As one participant stated:

“Communication with communities is a problem. We need creative ways to get information to the women in the community. Introduce a curriculum in secondary schools regarding marriage, common law relationships, and traditional systems. Funding should be provided for women’s education.”

One area in which women felt there were no resources was that of women and law which specifically relate to their situations. Several women questioned what their rights were, how they go about accessing information about divorce, prenuptial agreements etc. Women felt that they lacked information on scores of policies that affect them. As one woman stated:

“Our whole lives are driven by policy and we spend our life thinking about policy-we are thinking about Elections, membership, land claim, and MRP.”

Women felt that there is a need for advocacy on their part, and even a greater need for resources to help support them. Resources at the community level are very limited. As one woman describes the lack of resources in her community:

“I approached the community about couple counselling, for help. But Indian Affairs doesn’t provide counselling. Went a year with no help, the only help we got was from the Church, it helped me but not my husband, the church just didn’t meet his need, this kind of counselling was not available immediately.”

Another participant stated the same in relation to her community especially for young people and their relationships, thus perpetuating the inter-generational aspect of problems.

“There is nothing available, here are no couples counselling, there are no parenting classes, families started younger and younger, but there are no supports. There are no models in place that show what healthy relationships look like.”

Overall, resources are required in the communities because of the disenfranchisement they have faced over the years. Systems such as reserves, removal of children from families, residential schools and discriminatory legislation, poverty and racism have left communities in dire straights. Aboriginal women, and children in particular, paid a heavy price because they have experienced unprecedented violence. To revitalize traditional knowledge and to heal, funds are required.

Legislative Change

The Matrimonial Real Property situation is often described as a legislative gap. This characterization of MRP leads to solutions that are based in legislative change. There are a variety of legislative approaches that could be employed and each has to be considered in relation to the standards required as part of the law-making process, including the duty to consult, Aboriginal rights, the equality of women and men, international law and the Canadian Human Rights Act.¹

As part of the MRP Solutions initiative, NWAC was requested to share three legislative alternatives suggested by INAC with participants. Every activity undertaken under the MRP Solutions initiative included a discussion of these alternatives with participants. The level of knowledge expressed by participants varied widely: some were unfamiliar with legislative approaches to resolving gaps, while others were extremely knowledgeable about these processes and the benefits and drawbacks of different legislative alternatives.

¹ Eberts, MRP Discussion Guide, 2006.

Short Term Solutions

Implement overarching substantive federal legislation to protect the rights of women and children living on reserve in the interim until First Nation communities can develop their own laws: this legislation should include opt-out and compensation clauses

Generally, participants expressed muted support of the alternative based on the use of federal legislation to address MRP in the short term. The perceived level of support for this option was increased by the greater lack of support for the alternatives that would employ provincial and territorial legislation to address MRP issues. A number of participants provided similar responses when asked about the use of provincial or territorial law to resolve MRP issues:

“I am not in support of anything to do with the Provincial law.”

“Separate legislation for each Province and Territory would create difficulties.”

“If we had Provincial law apply on reserve, we would be dealing with an even bigger patchwork of laws, so it would be better for a Federal law to apply in the interim; Provincial law applying on reserve would weaken what little we already have.”

“Provincial laws are the greater evil.”

The survey that formed a portion of the Solutions initiative asked participants if they thought that “legislative change would be a good approach to resolving” the MRP situation. Almost 65% responded yes, that they supported this approach to some extent.

Overall the activities conducted during the MRP Solutions initiative, a small majority of participants advised that the legislative approach they preferred was for a substantive federal law to be developed on matrimonial real. Participants suggested that federal legislation would provide better consistency than band by-laws, which can be removed or altered by Chief and Council, and that it would provide greater equality in MRP solutions for women living in different provinces. Other participants stated that:

“I hope it isn’t a policy, that it’s a whole amendment to the Indian Act, but the money has to be attached to it.”

“I think ... that would be better for us as well in regards to matrimonial law to have federal law rather than provincial law.”

There was a clear and sizeable minority opinion among participants that neither federal nor provincial law should be implemented to resolve MRP issues on reserve. One participant cautioned that:

“We don’t necessarily have the best relationship with the colonial state and I would venture to argue that our interests are not always their interests.”

This opposition to legislative approaches is particularly marked in some regions such as Saskatchewan and Prince Edward Island. Another participant said that she preferred:

“None of these alternatives: a good start would be protecting the human rights of First Nation women.”

These views raise important concerns that must be considered and brought forward as part of the ongoing process to resolve MRP issues.

As part of this solution, NWAC proposes that federal legislation should include a compensation clause in order to provide redress for women and their children who have been negatively affected by the lack of MRP solutions in the past. An international law prism should be used. NWAC also suggests that this legislation should include an opt-out clause. This will enable First Nations who develop their own laws on matrimonial real property to opt-out of the federal legislation at any time in the future in order to implement their own laws. Such a solution meets the dual goal of promoting the equality rights of Aboriginal women and the right to self-determination of Indigenous peoples.

Medium Term Solutions

An enabling body consisting of Aboriginal women and First Nations representatives should facilitate a consultation and development process based on Indigenous law approaches for the resolution of MRP that is appropriate to each First Nation

Participants expressed concerns about the resources, capacity, consistency and consensus that will be necessary as First Nations move towards enacting their own MRP laws. One commented that:

“I believe very strongly that we have to develop that legislation ourselves. We have to believe in that legislation that it’s going to work and the only way we can believe in it is if we’re a part of its development and in the approval process.”

The results of the MRP Solutions initiative also support the idea of diversity in finding solutions to MRP. While there was strong support for traditional approaches and the use of First Nations law making capacity to deliver solutions, participants also acknowledged that some individuals follow different paths, and that these differences must be respected. Human rights must be protected at all times. One participant advised that:

“You are entitled to whatever you believe and it may be traditional or the European Christian way but the point of the matter is that

there is an issue there and that issue is Human Rights and it needs to be addressed.”

The creation of an enabling body will support the development of MRP solutions appropriate for each First Nation, while strengthening the process through the identification of standards that should be applied to these solutions. Participants referenced the need for fairness, equality, and independent decision-making as minimum standards. They also requested the use of consultative processes that are based on Indigenous knowledge. This reflects their requirements that the identification and the implementation of solutions are done in a manner that supports women and their communities, rather than in a way that creates further division and conflict.

Long Term Solutions

Communities utilize Indigenous law, which includes equal participation of women, to resolve MRP issues

It became very clear during the Solutions initiative that participants are ready to move forward. Participants indicated through their presence at these MRP Solutions initiative activities that they wish to be full participants in developing and implementing fair and equitable solutions to MRP that are based on Indigenous law. Participants clearly stated that finding solutions to the MRP issue was one that involves and includes both women and men. The solutions must be developed at the grassroots level, and must achieve results that do not merely shift the burden of inequality from one place to another. One participant described how:

“... we need our own laws, our own legislation and it has to reflect our culture. It has to reflect our world views and it has to be sensitive to the things we’ve seen over the last 200 years ... It has to be done holistically.”

The result of this collaborative approach to finding MRP solutions will be that First Nations utilize Indigenous law, which reflects the unique needs and interests of their community, to resolve MRP issues.

Communities will use this expertise to approach all decision making in the community

The use of the expertise developed as a result of the MRP Solutions initiative and future work arising from these solutions may result in communities approaching all decision making in the community using Indigenous laws. These laws must incorporate standards of fairness, equality, independence, and justice. Participants were very aware that the solutions identified and the processes implemented should ensure that the basis of action respected First Nations as sovereign peoples:

“... the basis of any negotiation, any discussion has to be with that (sovereignty) in mind at all times. Let’s not forget that part because we’re just not trying to save ourselves from that hurt today, we’re looking at centuries of our relationship to ourselves, to our families, to our communities, to the world that, we are who we are, and nobody can take that away from us.”

It is evident that any approach needs to be flexible enough to accommodate the varying situations of First Nations across Canada. Another participant spoke to the same theme, advising that:

“...no matter what this legislation that we’re going to be developing here; it has to be in recognition of our self-determination as a First Peoples of this country ... we are sovereign people.”

The First Nation peoples’ capacity to achieve this approach to decision-making would be supported through the implementation of practical supports for First Nations, including those that relate to resources and capacity.

Limitations

NWAC encountered some impediments that constrained the activities undertaken as part of the MRP Solutions initiative. These limitations are described below, together with some related implications for the process.

The short time frame that was available for the activities to be completed was a serious constraint on the success of the initiative. Due to issues associated with the negotiation, funding, and implementation of the contribution agreements, this already compressed time frame was shortened even further. This had a negative impact on several aspects of the process; most notably on the recruitment of participants. The invitations issued to women to participate in the sessions frequently were given very close to the start date of the sessions, due to the compressed time frames. This gave potential participants minimal time to make arrangements to attend. Women did not have sufficient time to arrange for the care of their families and for time away from their jobs, and to make appropriate travel plans, which resulted in their being unable to participate in the sessions, or in the subsequent failure of their arrangements because of their hurried implementation. In either situation, the end result was that women who wished to participate were not able to do so. Many of those participating, opposed the short time frame and wanted more time for a proper consultation process with enough time to obtain the views of women in First Nations communities.

The Solutions initiative also experienced logistic pressures related to the difficulty of communicating with a diverse and dispersed stakeholder group. The women who heard about the process and were able to participate through one of the mechanisms available (i.e. facilitated sessions, confidential survey, public hearings, written submissions,

personal interviews) advised NWAC that they saw value in the process. They frequently expressed concern, however, that the voices of many other women were not being heard, because these women were not able to travel away from their home communities or to access other participation channels, such as the internet. These communication difficulties especially affected women living in northern semi-remote, remote, or isolated communities.

Each of the three partners involved in the MRP Solutions initiative conducted activities targeting their specific stakeholders. NWAC represents Aboriginal women across the country regardless of where they reside, and the NWAC activities conducted under the MRP Solutions initiative welcomed women who live both on and off reserve. While the majority of the NWAC activities were conducted in locations off reserve, upon receiving invitations NWAC also held a small number of sessions that were located on reserve. NWAC is aware that women living on reserve experienced greater difficulty accessing NWAC activities, due to distance, cost, lack of transportation, and concerns about privacy and safety.

There was a tension evident between the desire of women to provide information and opinions to this national consultation effort, and their concerns for their personal safety or security that could be negatively impacted through such participation. NWAC made every effort to enable women to participate safely and for their personal information to be held in confidence. Even so, the act of attending a session could in itself place some women at risk, due to the potentially contentious nature of this topic. This concern for personal safety was especially apparent for women who live on reserve. The small size of some communities, combined with the limited number of options available for transportation meant that the decision to participate in the Solutions initiative could not be guaranteed to be kept a private matter. Some women feared that their safety would be compromised through participating: therefore they did not do so. As one woman commented:

“It is important that Federal government leaders recognize that there were women that were invited to attend this meeting, who were unable to come due to threats by spouses or former spouses; some women were afraid to lose their jobs for speaking out.”

The MRP Solutions initiative provided a valuable opportunity to raise awareness about MRP in the community, and it is evident that this awareness raising has occurred. NWAC was constrained, however, by women’s general lack of knowledge regarding MRP. While women were willing to share their experiences and thoughts about solutions, the need for further education and awareness building was evident throughout the process.

Conclusion

The connections of Aboriginal peoples to our lands and territories are sacred and historical. These are not just pieces of land, but our traditional territories. This issue of matrimonial property on reserve was not created by Aboriginal peoples. The issue of matrimonial real property on reserve is now a complex one to resolve; however, it should not be. There are many diverse First Nations communities with many diverse processes to address specific land issues. At the present time, all First Nations communities are governed by the *Indian Act* unless they have developed their own Self-Government Agreements. As we have noted, this piece of colonial legislation has had and continues to have detrimental impacts upon our communities. Throughout the years, when the *Indian Act* was amended, it was done unilaterally by the federal government. The patriarchal and patronizing actions of those governments have had numerous negative impacts upon First Nations individuals, families, and communities. There has been much discrimination in the past and it continues to this day. This discrimination has created detrimental impacts upon many generations of youth, women, men, families, and communities across this country.

When the *Indian Act* was amended in 1985 (Bill C-31), NWAC and the AFN made contributions prior to any amendments being made. These amendments (Bill C-31) were, again, created unilaterally by the Department of Indian Affairs. There were and are many lessons learned from that process. One of them is that we do not want to be used as pawns to justify government processes. We are not going to get caught into the divide and conquer tactics. NWAC believes that our communities need to resolve the impacts of colonization and to assist in building healthy communities. We know that our voices are critical to these efforts.

With respect to the issue of MRP, NWAC was appreciative to have at least a short time to consult with Aboriginal women and their children who have had a direct impact of a lack of recourse to their matrimonial home. It was considered the “bridging” point between the long fight for the recognition of Aboriginal women’s rights and issues arising out of the MRP cases. It was an opportunity for these participants to speak their truth and to have a voice.

However, there were very serious concerns raised by the participants regarding the short time frame for consultations and the turn around for this consultation process. As noted in our submissions in previous Standing Committees, NWAC needed a full year for these consultations. In this process, we were given three months. Many participants were skeptical of this process because they did view it as government driven but delivered by Aboriginal organizations. Based on the way the phases were developed, with only three months of consultation, they were justified in their skepticism.

The participants with whom we consulted wanted to see movement towards successful change and are hopeful that with their participation, any amendments, legislative change, or creation of new legislation will integrate their contributions provided in this process.

This whole process was to re-establish pride and self worth into the lives of participants who felt they were never heard, often forgotten, and disenfranchised. They want their rightful place in society. This process has been a positive step in the right direction of speaking out the voices of Aboriginal women and their communities before implementing changes that affect their rights.

The women who provided solutions in this process are daughters, sisters, mothers, grandmothers and granddaughters. They want the inter-generational cycle of abuse and marginalization to end. They want this to be a collective effort to bring the required change in their communities. Through the creation of a responsive and comprehensive MRP process, they want to heal and come together to reclaim their way of being now more than ever.

Appendix A: Summary of Solutions

Intergenerational impacts of colonization

Short term solutions	<ul style="list-style-type: none">• Federal legislation must include a retroactive clause to financially compensate Aboriginal women and their descendents who suffered a loss as a result of the <i>Indian Act</i> legislation• Membership and citizenship legislation and policies must be revised to provide choice for women and their descendents regarding band membership• The Aboriginal Healing Foundation and all Aboriginal healing and wellness programs must be expanded and adequately resourced to better address intergenerational impacts of colonization
Medium term solutions	<ul style="list-style-type: none">• A mechanism is developed to implement compensation for the lack of protections for women and their descendants including disenfranchisement from First Nation communities and loss of languages, cultures and identities as a result of MRP• Gender based impact analysis of the Aboriginal Healing Foundation and healing and wellness programs be resourced for improved effectiveness for Aboriginal women, children and families• Repatriation programs are developed and resourced for communities to embrace their members
Long term solutions	<ul style="list-style-type: none">• Break the cycle of intergenerational impacts of colonization and create the space to re-instill pride in Aboriginal identity and improve self-esteem• Women and their descendants will gain redress for the lack of protections of their rights that they experienced under the <i>Indian Act</i>

Violence

Short term solutions

- NWAC is provided with resources to develop an effective national strategy to stop violence against Aboriginal women, children and families that contributes to matrimonial breakdown
 - Implement enforcement orders
 - Increased transitional housing for women, children and families
 - Formalize and recognize the role of Aboriginal women's organizations as an official stakeholder in policy and program design and initiatives.
-

Medium term solutions

- Subsidized and affordable housing be provided in a safe and healthy communities
 - Impact assessment to evaluate the impacts and gaps of existing programs and services which address violence, including shelters and transition houses and to provide additional resources where needed.
 - Investigate promising practices for developing healthy communities
 - Provide transitional housing for men
-

Long term solutions

- Violence is unacceptable
- Communities utilize a collective culturally-relevant approach to resolving conflict
- Implement or expand the application of promising practices for developing healthy communities

Justice

Short term solutions	<ul style="list-style-type: none">• Improve access for Aboriginal women to judicial processes which should take into consideration the unique needs of semi-remote, remote and isolated communities• The justice system must enforce court orders, Band bylaws, etc.• Development of multi-staged systems of Aboriginal mediation or other appropriate Aboriginal systems and practices for justice/decision making under MRP• Assessment and evaluation of the impact of MRP measures implemented under <i>First Nations Land Management Act</i> (FNLMA)
Medium term solutions	<ul style="list-style-type: none">• That legal professionals and the justice system receive training regarding on reserve Aboriginal rights issues
Long term solutions	<ul style="list-style-type: none">• Implementation of a community-based, culturally appropriate Aboriginal conflict or dispute resolution by First Nation communities

Accessibility of supports

Short term solutions	<ul style="list-style-type: none">• Increase the funding of programs to support Aboriginal women and children to prepare them for healthy relationships and to support them during the breakdown of matrimonial relationships• Ensure that Aboriginal women can access programs and supports both on and off reserve, including those living in semi-remote, remote, and isolated communities
Medium term solutions	<ul style="list-style-type: none">• Develop a mechanism to provide a continuum of services for transitional ongoing support for Aboriginal women and children
Long term solutions	<ul style="list-style-type: none">• Aboriginal women and children are able to access their benefits under the <i>Indian Act</i> regardless of their residency.

Communication and education

Short term solutions	<ul style="list-style-type: none">• Develop, implement, and resource an ongoing facilitation and communication process to increase the understanding of Aboriginal women and communities on MRP rights, policies, and processes.
Medium term solutions	<ul style="list-style-type: none">• Establish mandatory federal/provincial/territorial policies for funding and implementation of Aboriginal Studies curriculum• Provide additional resources for education and upgrading training to increase employability of Aboriginal women to enable them to rebuild their families, communities and nations including the need to change eligibility requirements such as restrictive funding age limits.• Create a special fund/program specifically for women following marriage breakdown for education, training, economic development, and small business development with no eligibility barriers
Long term solutions	<ul style="list-style-type: none">• Individuals, families, communities, and nations will have resources and rights-based knowledge to build healthy, viable and sustainable communities

Legislative change

Short term solutions	<ul style="list-style-type: none">• Implement overarching substantive federal legislation to protect the rights of women and children living on reserve in the interim until First Nation communities can develop their own laws: this legislation should include opt-out and compensation clauses.
Medium term solutions	<ul style="list-style-type: none">• An enabling body consisting of Aboriginal women and First Nations representatives should facilitate a consultation and development process based on Indigenous law approaches for the resolution of MRP that is appropriate to each First Nation.
Long term solutions	<ul style="list-style-type: none">• Communities utilize Indigenous law, which includes equal participation of women, to resolve MRP issues.• Communities will use this expertise to approach all decision making in the community

Appendix B: Glossary of Terms

Aboriginal Healing Foundation

The Aboriginal Healing Foundation encourages and supports Aboriginal people in building and reinforcing sustainable healing processes that address the legacy of physical abuse and sexual abuse in the residential school system, including intergenerational impacts. It facilitates the healing process by providing resources for healing initiatives, promoting awareness of healing issues and needs, and by nurturing a supportive public environment.

First Nations Land Management Act (FNLMA)

The *First Nations Land Management Act* was passed by the federal government in 1999. It provides signatory First Nations with the opportunity to opt out of the land administration sections of the *Indian Act* and to establish their own regimes to manage their lands and resources. Under this process, a participating First Nation will develop a land code that sets out the basic rules for the land regime, which may include environmental management and protection laws. Within twelve months from the date the land code comes into effect, the First Nation must establish a community process to develop rules and procedures to deal with matrimonial property that do not discriminate on the basis of gender.²

Matrimonial Real Property (MRP)

This term refers to a couple's home or land that they live on, or benefit from, during their marriage or marital relationship. The key characteristic of this property is that it cannot be moved or easily physically divided between the spouses, unlike other types of property such as funds in a bank account or family furniture.

Transition Houses

Transition houses provide up to 30 days of temporary, safe, supported shelter to women and their children experiencing domestic violence in their lives. Transition houses may provide some combination of the following services: child care, parenting support, shelter, crisis intervention and counseling, transportation, outreach and accompaniment to appointments or to court.

² INAC Backgrounder First Nations Land Management Initiative, 2003.