Native Women's Association of Canada

United Nations Committee on the Elimination of Racial Discrimination 80th Session
13 February - 9 March 2012 Geneva

NWAC Shadow Report

January 30, 2012

Native Women's Association of Canada

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
2012 Submission

The Native Women's Association of Canada (NWAC) welcomes the opportunity to present our views to the Committee on the Elimination of Racial Discrimination (the Committee). NWAC is a national Aboriginal (First Nations, Inuit, Métis) organization representing the political voice of Aboriginal women throughout Canada. NWAC was founded on the collective goals of preserving Aboriginal culture, achieving equality for Aboriginal women, and having a role in shaping legislation relevant to Aboriginal women, particularly First Nations and Métis women. Aboriginal women in Canada continue to suffer from human rights violations and fundamental freedoms breached contained within the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), as stated in earlier reports to the CERD Committee. The following are concerns proposed by NWAC.

Executive Summary

Violence towards Aboriginal Women in Canada:
Systemic violence against Aboriginal woman (VAAW) and girls, their communities and their nations is grounded in colonialism. From an Aboriginal perspective, colonization in Canada created cultural, social, economical, and political dislocation. Assimilation tactics set in place by the Canadian government, such as the Indian Act, negatively impacted First Nations women and girls more than any other group; however the negative effects of colonial attitudes equally impact Inuit and Métis women. All Aboriginal women experience extreme marginalization and suffer from inequalities related to their social, economic, cultural, political and civil rights. These inequalities breed violence, such as post-colonial structural inequalities, family violence, racialized and sexualized violence and gender violence.

Young Aboriginal women are 5 times more likely than other women of the same age to die as a result of violence (Statistics Canada). Canadian police and public officials have done little to prevent the pattern of racist violence among Aboriginal women in Canada partially because they (police and public officials) are the primary perpetrators of the racial discrimination against Aboriginal women.

Due to the BC Commission of Inquiry's denial of funding to NWAC, Aboriginal women and girls women are being denied fair and direct access to the administrative and legal mechanisms of justice, which could have assisted them throughout the Inquiry's process. NWAC has long been working with missing and murdered women and their families and has also developed a great level of trust. NWAC questions the kind of fairness and justice families will receive without NWAC involvement in the BC Commission of Inquiry process.

The BC Government is not working towards protecting vulnerable Aboriginal women in the long term by refusing their representative bodies nor is it providing equal treatment before the law. There are missing and murdered Aboriginal women in every province in Canada. Therefore, NWAC has and is calling upon the Government of Canada to conduct a national Inquiry into these missing and murdered Aboriginal women in Canada.

As of December 2011, NWAC was extremely pleased to learn that the Committee on the Elimination of Discrimination against Women has initiated an inquiry under Article 8 of the Optional Protocol into missing and murdered Aboriginal women and girls in Canada. This inquiry is urgently needed. We hope that the Committee will request a visit and come to Canada to conduct the inquiry as soon as possible.

As Aboriginal women and girls, and their representatives and allies in Canada, we believe it is crucial that the CEDAW Committee move forward with its inquiry into the national tragedy of missing and murdered Aboriginal women and girls as expeditiously as possible. We request that the CERD Committee encourage the CEDAW Committee to seek permission for a visit to Canada in order that members undertaking the inquiry can speak directly with some Aboriginal women in Canada and visit some of our communities.

Action required by Canada:
We believe that a visit to Canada is essential for the Committee to be fully informed about the social, historical and geographical context in which the disappearances and murders of Aboriginal women and girls are taking place. NWAC and other equality-seeking human rights groups stand ready to assist the Committee in any way we can.

First Nations Child Welfare system in Canada
First Nations children are tragically over-represented in Canada's child welfare systems. INAC funds Aboriginal Child and Family service agencies at an average of 22% less than their provincial counterparts and it is 12.3 times more likely for an Aboriginal child to be in care than a non-Aboriginal child in fiscal 2009/10. Comprising 3.8 percent of the Canadian population, Aboriginal children make up a staggering 30 percent of children in foster care.

The first issue to address is the exclusion since its inception in 1977 of First Nations from the Canadian Human Rights Act (CHRA). Under Section 67 of this act, those with status under the Indian Act were excluded from the CHRA. Under Bill C-21, introduced in 2008, the Conservative government agreed to repeal Section 67, but gave First Nations leaders three years to learn about the CHRA and prepare for inclusion. This took place in June of 2011. First Nations were excluded from the Canadian Human Rights act in order to limit Aboriginal avenues of redress for numerous Canadian government violations of their human rights. This is part of a pattern in the colonial domination of Canada's First Nations by the Canadian government.

AFN/FNCFCS's case against the government is reasonable in that it indisputably characterizes child welfare service inequities as a failure on the part of the federal government "to consider the best interest of the child in conjunction with their collective cultural rights" which according to the United Nations Committee on the Rights of the Child, is a human right of indigenous children.

Canada was aware of the resulting discrimination, when it referred to the "disproportionately high number of Aboriginal children in state care" and claimed it was incrementally shifting to a prevention-focused approach: The disproportionately high number of Aboriginal children in state care is part of broader social challenges on reserves, such as poverty, poor housing conditions,

substance abuse and exposure to family violence. The Government of Canada is incrementally shifting its child welfare programs for Aboriginal children to a prevention-focused approach. It is expected that all agencies will be using the prevention-focused approach by 2013.

Federal-Provincial Funding Jurisdictional Disputes

Jordan River Anderson was 5 years old when he died in the hospital due to a federal-provincial funding jurisdictional dispute. Jordan's Principle is a child first principle implemented to end the jurisdictional disputes within and between Governments (Provincial/Federal) regarding funding to First Nations children.

Since the establishment of Jordan's Principle, Cindy Blackstock, Child Advocate, notes that Jordan's Principle has been interpreted restrictively by applying only to children with complex medical needs with multiple service providers. Only months after Jordan's Principle passed through the House of Commons, Canada and Manitoba argued over who should pay for feeding tubes for two chronically ill children living with their family on reserve. A 2005 report identified 393 disputes between the Federal and Provincial/territorial governments impacting First Nations children.

The inability of Canada to remedy the administrative nightmare of its policies and programs related to the national Native education and child welfare programs in Canada is a serious problem.

Action required by Canada:

In keeping with Jordan's Principle, Canada must follow the recommendations made by its own Auditor General with respect to the national Aboriginal child welfare system in Canada and take immediate steps to remedy jurisdictional barriers and funding problems of the Aboriginal child welfare system.

First Nations Education

The current funding levels of First Nations education, repeatedly highlighted by First Nations themselves, are insufficient and well below the funding levels given to provincial school systems by the Canadian Federal government. National Chief Phil Fontaine recently stated how "resources to First Nations communities have been capped at 2% growth since 1996 a cap that does not keep pace with inflation or our young, booming population." This funding cap towards First Nations education is intolerable, and clearly depicts inequities between the provincial education system and First Nations education.

The underfunding of elementary education is a serious concern for NWAC. Many First Nations on-reserve schools are in miserable condition and disrepair. The Canadian government recognizes the need to improve First Nations education because it is affecting Canadian economic productivity, and politics. The solution, proposed by the Canadian Federal government (in the 2008 Federal Budget) was to integrate First Nations education into the provincial education system. This solution does not consider the culture, language and identity of First Nation people, and could be viewed as another attempt by the government to assimilate First Nations.

Shannen Koostachin was a Mushkegowuk Innanu from an isolated community, Attawapiskat First Nation in Ontario, Canada who advocated for "safe and comfy schools" and culturally-based and equitable education on reserves (Shannen's Dream campaign). Shannen wrote to the United Nations Committee on the rights of the child in 2008 and was nominated for the international Children's Peace Prize in the Netherlands in 2008. She and her family made the difficult decision to send her hundreds of miles away from her family to get a proper education off-reserve. Shannen is noted as saying, that children "are losing hope by grade 5 and dropping out." Shannen died tragically in a car accident in the spring of 2010 at the age of 15, while attending school far away from her home.

Action required by Canada:
Canada must follow the recommendations made by its own Auditor General and take immediate steps to remedy the education shortfalls in infrastructure, funding, access and services in First Nations' schools in Canada to commensurate with provincial schools.

The *Indian Act* and Equality under the Law, Child Paternity Registration, Sexual Discrimination based on race, colour, descent, national or ethnic origin
The Department of Aboriginal Affairs and Northern Development Canada (formerly, Indian and Northern Affairs Canada), is the only government-mandated federal department in Canada which registers its citizens as a separate and distinct group in Canada, under the *Indian Act*. Its mandate is to register "Indians" under the Indian Affairs' Departmental Register in order to track and fund social programs based on Indian identity. Each "Indian" citizen belongs to a reserve and is allotted a number. Due to past inequities in the application of the registration, the Department of Indian Affairs was forced to change some of its registration policies in 1985, allowing both men and women to be registered on the same basis. However, this issue was never fully addressed and resulted in a subsequent legal case being brought forward by Sharon McIvor (BCCA 2009). Even though the Government recently passed and put into effect *Bill C-3 Equity in Indian Registration Act*, residual discrimination still exists today.

Furthermore, the Indian Act 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. While an individual can marry whom he or she chooses, as noted by Canada's report, such a decision is not made without negatively affecting his or her equal right to pass on status and membership rights to their descendants. This further negatively affects a person's right to culture and to pass on their culture, which is intimately tied to the land, to their descendants. Canada's assertion that the registration system has as its purpose to "maintain continuity with the original Aboriginal peoples of Canada" does not reflect the well-documented reality that this registration system will in fact lead to the elimination of individuals entitled to register under the *Indian Act*. This is because of the overly rigid, still residually discriminatory registration system created by the 1985 Amendments.

This situation requires legislative and policy changes, based on full and effective consultation and collaboration with Indigenous peoples and representative organizations. Indigenous women's organizations must play a key role, given the specific discriminatory impact this legislation has had on Indigenous women and their descendants.

In addition, in order for a Native woman's child to be registered as an Indian and to receive the entitlements that follow from this status, Native women who hold Indian status in Canada are presently being informed that they must register the name of the paternal father of their child on the child's birth certificate, in order for their child to receive Indian registration and the entitlements which flow from that registration.

Actions Required by Canada:
In consultation and cooperation with Indigenous Peoples and representative organizations, including Indigenous women's organizations, Canada must implement policy and legislative changes that will remove the residual gender discrimination against First Nations women and their descendants and redress the current discriminatory erosion of rights to membership and status under the *Indian Act* of all First Nations individuals.

Criminal Justice - Bill C-10 - Discrimination, Insecurity and Disregard for Human Rights
NWAC has concerns about the lack of access to justice and high rates of incarceration of Aboriginal Peoples and the impacts on those individuals and their families, and overall concern about the general direction of these initiatives. The Canadian Bar Association (CBA) is committed to public safety, and there is broad consensus among reputable Canadian criminal justice experts as to what is most effective in achieving a safer society. At its 2011 Canadian Legal Conference, the CBA publicly urged that Canada adopt:

- a more health based response to the mentally ill, in place of incarceration;
- policies and laws that recognize the historical, social and economic realities of aboriginal people;
- a judicial "safety valve" to ensure justice in sentencing; and
- a policy of transparency in regard to the cost of any future criminal justice initiatives.

In their view and in NWAC's view as well, the initiatives in Bill C-10 are in direct contrast. They adopt a punitive approach to criminal behavior, rather than one concentrated on how to prevent that behavior in the first place, or rehabilitate those who do offend. As most offenders will one day return to their communities, we know that prevention and rehabilitation are most likely to contribute to public safety. The proposed initiatives also move Canada along a road that has clearly failed in other countries. Rather than replicate that failure, at enormous public expense, we might instead learn from those countries' experience.

The proportion of full parole applications resulting in National Parole Board reviews is lower for Aboriginal offenders. The percentage of full parole waived due to incomplete programs continues to increase at a higher rate for Aboriginal offenders than for non-Aboriginal offenders (33.4% from 2002/03 to 41% 2006/07 for Aboriginal offenders and 26.6% to 31.4% for the same period for non-Aboriginal offenders).24 The percentage of denied recommendations to grant full parole continued to increase for Aboriginal offenders while decreasing for non-Aboriginal offenders (24.3% compared to 5.2%).25 The gap in outcomes has significantly increased. (13.1% in 2005/06 to 19.1% in 2006/07).26 Aboriginal offenders are over-represented among those referred for detention rather than parole and their parole is more likely to be revoked for breach of conditions.

The greater likelihood of statutory release for Aboriginal offenders equals more time spent incarcerated and less time in the community under supervision for programming/intervention

than for non-Aboriginal offenders. While CSC does not direct the National Parole Board, the Service does have control over many of the factors that contribute to delayed parole for Aboriginal offenders.

The nature of the underlying offence is one factor in later parole rates for Aboriginal offenders, given their proportionately higher representation in the commission of violent crime. Yet, it is unlikely that this alone accounts for the disproportionate rates. Systemic discrimination, culturally laden notions of accountability, over-classification, over-segregation, and a lack of availability of Aboriginal specific programs while incarcerated may all play a role in the granting of parole to Aboriginal offenders.

The situation of Aboriginal women in terms of security classification, access to programs and timely conditional release is even more problematic. The OCI has noted a significant increase in the number of women offenders returning to the community on statutory release rather than on day or full parole as well as a corresponding increase in the number of waivers and postponements of National Parole Board hearings by women offenders. Both of these trends are most evident among Aboriginal women**.**

NWAC thanks you for taking the time to review this 2012 CERD Executive Summary. For access to this and other reports, please visit our site at: **www.nwac.ca**

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
2012 Submission

Violence towards Aboriginal Women in Canada:
Colonization and the Impacts of Violence against Aboriginal Women and Girls

Systemic violence against Aboriginal woman (VAAW) and girls, their communities and their nations is grounded in colonialism. From an Aboriginal perspective, colonization in Canada created cultural, social, economical, and political dislocation. Duncan Campbell Scott, deputy superintendent of the Department of Indian Affairs (a position he held from 1913 to 1932), "I want to get rid of the Indian problem. Our object is to continue until there is not a single Indian in Canada that has not been absorbed. They are a weird and waning race...ready to break out at any moment in savage dances." [1]

Aboriginal peoples have suffered repeated trauma at the hands of the Canadian Government and the Church. They stole Aboriginal lands, destroyed their cultures and confined their children to residential schools where many were systemically abused. The Indian Act (1867) was shaped by Western colonial thinking and implemented with one goal in mind: to assimilate First Nations people in order to free up lands and resources and allow the Crown to avoid its fiduciary responsibilities. The Indian Act negatively impacted First Nations women and girls more than any other group; however the negative effects of colonial attitudes equally impact Inuit and Métis women. All Aboriginal women experience extreme marginalization and suffer from inequalities related to their social, economic, cultural, political and civil rights.

These inequalities breed violence, such as post-colonial structural inequalities, family violence, racialized and sexualized violence and gender violence. These inequalities lead to poverty, lack of access to adequate housing, including lack of access to matrimonial property rights, lack of access to justice, low education and employment rates, low health status and little or no political participation.

Long-term subjugation in Native communities exacerbated these conditions, doubling the suffering for women. Colonization has manifested into our own peoples' way of thinking and behaving. This is demonstrated by the current high rates of violence, for example, facing Aboriginal women both within and outside their communities. Men bare a special guilt, adding to Aboriginal women's oppression by inflicting pain on their wives, daughters, mothers, and sisters (Taiaiake: 35:1999).

Young Aboriginal women are 5 times more likely than other women of the same age to die as the result of violence (Statistics Canada). Canadian police and public officials have done little to prevent the pattern of racist violence among Aboriginal women in Canada partially because they (police and public officials) are the perpetrators of the racial discrimination against Aboriginal women.

[1] A NATIONAL CRIME, By John S. Milloy

NWAC's Role in Minimizing Racial Discrimination among Aboriginal Women and Girls in Canada

In 2005 NWAC launched the Sisters In Spirit Initiative (SIS). The initiative began as a five-year research, education and policy initiative funded by Status Women Canada designed to address the alarming incidence of violence against Aboriginal women, including disturbing numbers of missing and murdered Aboriginal women and girls. This knowledge assists NWAC and other stakeholders to explore the connection between the root causes of violence and identify measures to increase the safety of Aboriginal women and girls. While NWAC has made great strides in bringing to light issues of violence that have led to the disappearance and death of Aboriginal women and girls, Aboriginal women continue to be the most at risk group in Canada for issues related to violence, and complex issues linked to intergenerational impacts of colonization and residential schools.

In a 2010 NWAC "Sisters In Spirit" Report, it is noted that there are over 600 missing or murdered Aboriginal women in Canada. From 2005 to 2010 NWAC was successful in turning the research of Sisters In Spirit into practical analysis and reflection on how to better respond to the issue of missing and murdered Aboriginal women. The research, combined with life stories of women and girls who are either missing or who have been found murdered, has led to an intimate knowledge of the experience of families, the patchwork of policies, programs and services available to women, families, communities, and the jurisdictional divisions that prevent effective responses by the police and justice systems to the needs of Aboriginal women and families.

On September 27, 2010, the government of British Columbia established the Missing Women Commission Inquiry, with the former Attorney General of British Columbia, Wally Oppal Q.C., as the Commissioner.[2] This is an Inquiry into the facts, police investigations and official decisions involved in the disappearances and murders of over 33 women from Vancouver's Downtown Eastside between the years 1997 and 2002. The Commission will also study the disappearances and murders along Highway 16 in northern British Columbia, known as the "Highway of Tears". A disproportionate number of women who have disappeared from the Downtown Eastside are Aboriginal, as are the majority of those who have disappeared or found murdered along the Highway of Tears. The backdrop to theses disappearances and murders is a pattern of chronic and extreme violence against Aboriginal women.

The Inquiry is the first and only official Inquiry appointed in Canada that is mandated to examine some of the disappearances and murders of Aboriginal women and girls, as well as police responses to these incidents.

NWAC applied for standing at the Inquiry, and was the only Aboriginal organization granted full standing. Standing permits participation as a party with the right to cross-examine witnesses, present evidence and make submissions. Commissioner Oppal granted standing to a number of groups because of their expertise and direct interests. He also determined that some of these

[2] See terms of reference and complete information on the Missing Women Commission of Inquiry at: http://www.missingwomenInquiry.ca/

groups would not be able to participate unless public funding was provided for legal counsel, and he therefore recommended that funding be provided as appropriate.
Commissioner Oppal stated specifically that the participation of NWAC was crucial. He wrote:

NWAC has spent nearly ten years gathering evidence and information related to missing and murdered Aboriginal women across Canada. They have a direct interest in the outcome of this hearing and a large role to play in ensuring that the voice of Aboriginal women is represented in the Inquiry process.[3]

On July 22, 2011, the Attorney General refused to provide funding for legal counsel, except for one lawyer representing some of the families of women who were murdered by serial killer William Robert Pickton. The Attorney General, in effect, overturned the independent Commissioner's ruling on standing, since without federal funding for legal counsel, NWAC and other groups, cannot exercise the standing they were granted. NWAC has been forced to discontinue its involvement in the Inquiry because of the denial of funding.

The Vancouver Police Department, the Criminal Justice Branch of the Attorney General's Ministry, and the Royal Canadian Mounted Police—whose conduct is all under scrutiny—are each represented by publically funded legal counsel.
Commissioner Oppal, on August 10, 2011, announced that the commission had hired two "independent" lawyers on contract to help "ensure that the perspectives of Vancouver's Downtown East Side community and aboriginal women are presented at the Inquiry." [4]

The denial of funding places NWAC on an unequal footing with the Vancouver Police Department, the Royal Mounted Police, and the Criminal Justice Branch of the Attorney General's Ministry, all of whose conduct is under scrutiny. Whereas these state officials and institutions are represented now and will be represented at the Inquiry by publically funded counsel, NWAC, and other organizations with direct knowledge of the disappeared and murdered women and of their lives and conditions have been denied the equal capacity to participate, cross-examine witnesses, and to bring forward their information and expertise. The effect of this is to privilege the information, perspectives, and expertise of the state officials over that of disadvantaged women, whose experience and vulnerability is conditioned by their sex, Aboriginality, and poverty. These actions are contrary to Article 5 (a) and (b) of the CERD, as well as Article 22 (2) of the United Declaration on the Rights of Indigenous peoples, which states:

Article 5 of CERD: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

[3] Letter from the Commissioner Wally Oppal to the Honorable Barry Penner, Attorney General of British Columbia, June 30, 2011.
[4] (Missing Women's Commission of Inquiry, "Missing Women Commission Appoints Two Independent Counsel; Two Others to participate Pro Bono", August 10, 2011, online at: http://www.missingwomeninquiry.ca/2011/08/august-10-2011-missing-women-commission-appointes-two-independent-lawyers-two-others-to-participate-pro-bono/

(a) The right to equal treatment before the tribunals and all other organs administering justice;
(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

Article 22(2) United Nations Declaration on the Rights of Indigenous Peoples: States shall take measures in conjunction with Indigenous peoples, to ensure that Indigenous women and children are free enjoy the full protection and guarantee against all forms of violence and discrimination.

Due to the BC Commission of Inquiry's denial of funding to NWAC, Aboriginal women and girls women are being denied fair and direct access to the administrative and legal mechanisms of justice which could have assisted them throughout the Inquiry's process. NWAC has long been working with missing and murdered women and their families and has also developed a great level of trust. NWAC questions the kind of fairness and justice families will receive without NWAC involvement in the BC Commission of Inquiry process.

NWAC has expressed that it is only through independent and thorough examination of the root causes of violence and what has happened, and through listening to the knowledge and experience of NWAC and others, can governments in Canada develop the appropriate new and effective measures to stop the violence. [5](Stated NWAC President Jeannette Corbiere Lavell.)

In effect, the BC Government is not working towards protecting vulnerable Aboriginal women in the long term by refusing their representative bodies nor is it providing equal treatment before the law. There are missing and murdered Aboriginal women in every province in Canada. Therefore, NWAC has and is calling upon the Government of Canada to conduct a national Inquiry into these missing and murdered Aboriginal women in Canada.

As of December 2011, NWAC was extremely pleased to learn that the Committee on the Elimination of Discrimination against Women has initiated an inquiry under Article 8 of the Optional Protocol into missing and murdered Aboriginal women and girls in Canada. This inquiry is urgently needed. We hope that the Committee will request a visit and come to Canada to conduct the inquiry as soon as possible.

We know that the Committee has been in dialogue with Canada about missing and murdered Aboriginal women and girls since 2008. We are aware of the Committee's priority recommendation on this subject in its 2008 Concluding Observations after its review of Canada, the request for a follow-up report by Canada in 2009, and the Committee's conclusion in 2010 that Canada has not implemented the Committee's recommendation. We know further that the Committee has been in communication with Canada since then asking for additional information, and for a report on outcomes of measures that Canada says it has put in place. We thank you for this consistent effort on behalf of Canada's most disadvantaged and threatened women and girls.

[5] (Letter to the BC Commission of Inquiry dated July 22, 2011 from Jeannette Corbiere-Lavell, President NWAC).

However, given these efforts over four years and the unsatisfactory outcomes, an Article 8 inquiry is timely and necessary.

Many of the groups and individuals who are advocates for the safety of Aboriginal women have worked for more than a decade, to bring this issue to the attention of the Government of Canada, as well as provincial and territorial governments. We have tried to impress upon our governments the seriousness of the human rights violations involved, and the need for strategic, co-ordinated action to address the police and government failures that permit and condone persistent sexualized and racialized violence. Many of us have provided support and services to Aboriginal women and girls who have experienced violence, and to members of the families of women and girls who have disappeared or been murdered. We have all worked in different ways and in different communities within Canada.

We have lobbied, written, spoken out, walked across the country, held hundreds of vigils for the disappeared and murdered women, intervened with police, appeared before Parliamentary Committees, and met with government officials, repeatedly.

Despite our years of effort, our goal has not been achieved. Canada does not yet have in place a co-ordinated National Plan, with detailed and concrete measures, to address the root causes and remedy the consequences of the violence against Aboriginal women and girls. Some small steps have been taken, but when these steps are assessed against the long-standing and continuing pattern of violence and the harms that it causes to women, girls, families and communities, the response of the Government of Canada, and the provincial and territorial governments, remains weak, un-coordinated, and inadequate.

In addition, the voices of Aboriginal women and their organizations are still ignored and disrespected, and they are excluded from participation in deliberations about their lives and their deaths. Most recently, the Parliamentary Committee on the Status of Women released its final report on violence against Aboriginal women. The report ignores the testimony given by hundreds of Aboriginal women and Aboriginal women's organizations and it offers no real solutions.

Further, because the Government of British Columbia denied funding for legal counsel to the groups who were granted standing by Inquiry Commissioner, Wally Oppal, the Missing Women Commission of Inquiry in British Columbia is proceeding without the participation of the Native Women's Association of Canada, and other crucial organizations who work directly with, and defend the rights of women who are targets of violence. Neither analysis of the problems, nor solutions to them, can be formulated effectively if Aboriginal women, their organizations, and those with knowledge and expertise about their conditions, are not included and listened to.
As time goes by, and there are still no effective measures in place, there is an increasing sense of urgency and frustration. Aboriginal women and girls continue to disappear and be found murdered. We believe that external intervention and examination is necessary. The Committee's presence in Canada can instruct governments and the public of the gravity of the human rights violations. The Committee can also identify the measures that need to be put in place immediately to satisfy Canada's obligations to prevent, investigate, prosecute and remedy violence against Aboriginal women and girls.

As Aboriginal women and girls, and their representatives and allies in Canada, we believe it is crucial that the CEDAW Committee move forward with its inquiry into the national tragedy of missing and murdered Aboriginal women and girls as expeditiously as possible. We request that the CERD Committee encourage the CEDAW Committee to seek permission for a visit to Canada in order that members undertaking the inquiry can speak directly with some Aboriginal women in Canada and visit some of our communities.
We believe that a visit to Canada is essential for the Committee to be fully informed about the social, historical and geographical context in which the disappearances and murders of Aboriginal women and girls are taking place. NWAC and other equality-seeking human rights groups stand ready to assist the Committee in any way we can.

First Nations Child Welfare System in Canada
First Nations children are tragically over-represented in Canada's child welfare systems. INAC funds Aboriginal Child and Family service agencies at an average of 22% less than their provincial counterparts and it is 12.3 times more likely for an Aboriginal child to be in care than a non-Aboriginal child in fiscal 2009/10. Comprising 3.8 percent of the Canadian population, Aboriginal children make up a staggering 30 percent of children in foster care.[6]

Issues Surrounding the Recent Human Rights Complaint
The first issue to address is the exclusion since its inception in 1977 of First Nations from the Canadian Human Rights Act (CHRA). Under Section 67 of this act, those with status under the Indian Act were excluded from the CHRA. Under Bill C-21, introduced in 2008, the Conservative government agreed to repeal Section 67, but gave First Nations leaders three years to learn about the CHRA and prepare for inclusion. This took place in June of 2011.
First Nations were excluded from the Canadian Human Rights act in order to limit Aboriginal avenues of redress for numerous Canadian government violations of their human rights. This is part of a pattern in the colonial domination of Canada's First Nations by the Canadian government. Parallels to this policy of exclusion include the fact that status Indians were not given funding for post-secondary education until 1968, and that by the 1960s, only 200 status Indians were enrolled in post-secondary education. Another parallel is the historic prohibition against First Nations obtaining legal representation. Though the passing of Bill C-21 in 2008 and its application in 2011 are positive steps, one can be skeptical of the government's actual willingness to be accountable to First Nations, especially in relation to their reaction to the FNCFCS (First Nations Caring Society of Canada) and AFN's (Assembly of First Nations) human rights complaint which is outlined below.

AFN/FNCFCS's case against the government is reasonable in that it indisputably characterizes child welfare service inequities as a failure on the part of the federal government "to consider the best interest of the child in conjunction with their collective cultural rights" [7] which according to the United Nations Committee on the Rights of the Child, is a human right of indigenous children. Among many issues the FNCFCS underlines the fact that according to the 2005

[6] http://www.jhr.ca/rightsmedia/2009/05/today%E2%80%99s-canadian-aboriginal-children-the-origin-of-tomorrow%E2%80%99s-government-apology/
7 United Nations Committee on the Rights of the Child. General Comment on the Rights of Indigenous Children. Geneva, Switzerland. January 12-30, 2009.

Wen:de study, "…0.67% of non Aboriginal children were in child welfare care in three sample provinces in Canada as compared to 10.23% of status Indian children, and that overall there are more First Nations children in child welfare care in Canada than at the height of residential schools".[8] According to federal government figures the number of status Indian children entering child welfare care rose 71.5% nationally between 1995-2001. Even these basic statistics are evidence of the inequities which exist between child welfare in First Nations communities and in wider society. These statistics are clear violations of the human rights of First Nations children.

The National Aboriginal Initiative believes that the Attorney General's move is designed to give the federal government "sweeping immunity" from Human Rights prosecution. This attempt to replace First Nations exclusion from the CHRA with federal immunity from Bill C-21 is similar to the governments replacing of residential schools with the child welfare system itself: replacing an explicit act of discrimination with a more subtle variety. The federal government tends to obfuscate the issues raised in the First Nations human rights complaint, by distracting from the underlying and central point of inequity. For example Minister of Indian and Northern Affairs Duncan's 2010 comments before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development, in which he draws attention to the fact that INAC's child welfare funding has increased "from 193 million 14 years ago to 550 million last year". [9] This ignores how much is comparatively spent on non-First Nations children, and also ignores questions of cultural discrimination in how that money is spent. INAC also frequently underlines its partnership with AFN on the Canada-First Nations Joint Action Plan, as if this somehow distracts or detracts from the legitimacy of their simultaneous human rights complaint.

When a discrimination complaint was filed against the Canadian government under the CHRA, the government denied that the CHRTribunal had jurisdiction to hear cases relating to Canadian government discrimination in providing funding for child welfare services on First Nations reserves. However, this position contradicts the government's earlier statements on the scope of cases that could be heard following the repeal of s. 67. Minister of Indian Affairs, Jim Prentice, made representations in 2007 to the Parliamentary Standing Committee on Aboriginal Affairs on the significance of the repeal of s. 67. The Minister confirmed that the CHRA could be a basis for reviewing INAC programs and services to ensure compliance with human rights obligations:

> "The repeal of section 67 will provide first nation citizens, in particular first nation women, with the ability to do something that they cannot do right now, and that is to file a grievance in respect of an action either by their first nation government, or frankly by the Government of Canada, relative to decisions that affect them. This could include access to programs, ***access to services***, the quality of services that they've accessed, in addition to other issues, such as membership, I assume, as well.[10]"

---

8 KPMG LLP. Indian and Northern Affairs Canada: Review of Wen:De The Journey Continues. Ottawa, Ontario, July 30, 2010.

[9] Duncan, the Honourable John, PC, MP. Notes for an address to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development, regarding First Nations Child and Family Services. Ottawa, Ontario. November 24, 2010.

[10] Canada, Standing Committee on Aboriginal Affairs and Northern Development, *Minutes of Proceedings and Evidence, (*March 22, 2007). http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2786776&Language=E&Mode=1&Parl=39&Ses=1 [emphasis added]

More recently, AANDC affirmed that the amendment to repeal s. 67 "ensures that First Nations people living on reserves have full access to, and protection under" the CHRA. In reference to the repeal of section 67 of the Act, AANDC has concluded as follows in its "Backgrounder", issued contemporaneously with its official statement endorsing the Declaration: "… a legislative amendment passed in 2008 ensures that First Nations people living on reserves have full access to, and protection under, the *Canadian Human Rights Act*.[11]"

The Auditor General of Canada has underlined that, in 2008, the number of First Nations children in State care was "was close to eight times the proportion of children residing off reserves":

> **4.46** First Nations children are among the most vulnerable members of society. In 2008, we noted that over five percent of all children residing on reserves were in care; this was close to eight times the proportion of children residing off reserves. INAC has taken some actions to implement the two recommendations on which we followed up for this audit. Nevertheless, there has yet to be a notable change in the number of First Nations children in care[12].

Canada was aware of the resulting discrimination, when it referred to the "disproportionately high number of Aboriginal children in state care" and claimed it was incrementally shifting to a "prevention-focused approach:

> The disproportionately high number of Aboriginal children in state care is part of broader social challenges on reserves, such as poverty, poor housing conditions, substance abuse and exposure to family violence. The Government of Canada is incrementally shifting its child welfare programs for Aboriginal children to a prevention-focused approach. It is expected that all agencies will be using the prevention-focused approach by 2013[13].

Jordan's Principle and the National Level of Child Welfare Cases in Canada

Jordan River Anderson was 5 years old when he died in the hospital due to a federal-provincial funding jurisdictional dispute. [14] Jordan's Principle is a child first principle implemented to end the jurisdictional disputes within and between Governments (Provincial/Federal) regarding funding to First Nations children.

---

[11] Indian and Northern Affairs Canada, "Backgrounder: Canada's Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples,"12 November 2010, http://www.aadnc-aandc.gc.ca/eng/1292353979814. [underline added].

12 Office of the Auditor General of Canada, *Status Report of the Auditor General of Canada to the House of Commons – 2011*, Ch. 4 (Programs for First Nations on Reserves), at 23.

[13]Canada, "Government Response to the Standing Senate Committee on Human Rights Report: 'Children: The Silenced Citizens Effective Implementation of Canada's International Obligations with Respect to the Rights of Children'" in Canada, "Convention on the Rights of the Child: Third and Fourth Reports of Canada Covering the period January 1998 – December 2007", received by Committee on the Rights of the Child on 20 November 2009, Appendix 5, at para. 98. [emphasis added]

[14] http://www.fncfcs.com/jordans-principle/

Since the establishment of Jordan's Principle, Cindy Blackstock, Child Advocate, notes that Jordan's Principle has been interpreted restrictively by applying only to children with complex medical needs with multiple service providers. Only months after Jordan's Principle passed through the House of Commons, Canada and Manitoba argued over who should pay for feeding tubes for two chronically ill children living with their family on reserve. A 2005 report identified 393 disputes between the Federal and Provincial/territorial governments impacting First Nations children.[15]

On the basis of race and ethnic origin the Government of Canada discriminates towards First Nations in its failure to provide adequate funding. This violates section 15 of the Canadian Charter of Rights and Freedoms as well as infringes on the rights of First Nations children and youth to the equal benefit of the laws of Canada.

Jordan's Principle should be formally implemented as a requirement in all federal, provincial and territorial policies pertaining to Aboriginal child welfare. NWAC is concerned of the rising number of Aboriginal children in care in Canada. Due to poverty and the inability to access services on and off the reserve, First Nations children are taken from their families and communities. The best preventative approach is to allow Aboriginal children to stay in their families and in their communities in order to end the cycle of dislocation. Instead of implementing so called "emergency measures"—what the government perceives to be "the best interest for the child" by "measuring" First Nations households with the "material yardstick"—the Government of Canada should be installing ways (through funding) to prevent the dislocation of First Nations families with their children.

"Children are our future. The living conditions of many Aboriginal families are alarming. Concrete commitments are required to ensure that Aboriginal families and children do not live in poverty and that they have access to decent and safe housing, running water, food and other basic necessities that most Canadians take for granted," stated NWAC President Jeannette Corbiere Lavell.

While the 2011 Auditor-General's Report could not establish a full costing of the amount spent on Child Welfare in Canada in its last report to Parliament, the Report acknowledges its awareness of the problem.

NWAC reiterates the following Recommendations made by the Auditor-General in its 2011 Report:

> **4.74:** Indian and Northern Affairs Canada should determine the full costs of meeting the policy requirements of the First Nations Child and Family Services Program. It should periodically review the program's budget to ensure that it continues to meet program requirements and to minimize the program's financial impact on other departmental programs in compliance and in conjunctions with First Nations operators.

[15] http://www.straight.com/article-254075/cindy-blackstock-and-andrea-auger-reconciliation-cant-be-empty-promise-first-nations-children

NWAC supports the following recommendations of the First Nations Child and Family Services Caring Society of Canada: "*INAC must take immediate steps to fully redress the inequities and structural problems with the Directive 20-1, enhanced funding approach and the 1965 Indian Welfare Agreement which the Auditor General has found to be inequitable."*

When First Nations child welfare experts completed the first two reports to remedy inequalities in First Nations child welfare funding (McDonald & Ladd, 2000; Loxley et al., 2005), the federal government was running a surplus budget in the billions of dollars. The second report known as the Wen:de: the Journey Continues Report (Loxley et al., 2005), suggested that an additional 109 million dollars in additional child welfare funding on reserves was needed (excluding Ontario and the territories,) along with some policy changes. The 2008 federal budget announcement on First Nations child welfare funding (Department of Finance, 2008) provided only 23% per year of what was needed. In the 2009 budget the government announced an additional 20 million over two years (Department of Finance, 2009). When added, the amount provided in both budgets, represents one third of what was recommended per year in the Wen:de reports (excluding Ontario and the territories) to achieve equity.[16]

Detailed economic analysis determined that an additional 109 million dollars per year in federal child welfare funding is needed to ensure a very basic level of equivalency to provincial funding levels which are 22% higher. (Loxley, DeRiviere, Prakash, Blackstock, Wien & Thomas Prokop, 2005). The key area of underfunding was Least Disruptive Measures services to First Nations families to keep their children safely at home, resulting in larger numbers of First Nations children resident on reserve entering child welfare care than necessary (Blackstock, Prakash, Loxley & Wien, 2005). A recent survey of 12 First Nations child and family service agencies indicated that the 12 agencies had experienced 393 jurisdictional disputes this past year requiring an average of 54.25 hours to resolve each incident. The most frequent types of disputes were between two or more federal government departments (36%), between two or more provincial departments (27%) and between federal and provincial governments (14%). Examples of the most problematic disputes were with regard to children with complex medical and educational needs, reimbursement of maintenance, and lack of recognition of First Nations jurisdiction.[17]

The inability of Canada to remedy the administrative nightmare of its policies and programs related to the national Native education and child welfare programs in Canada is a serious problem which contravenes Articles 1 (4), 2 (1) (b), (c), (d), (e) and 5 (a) of CERD:

Article 1 (4) of CERD: 1 (4) Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

[16] http://www.fncfcs.com/sites/default/files/docs/SenateCommitteeOnHumanRights_2009.pdf
[17] http://www.fncfcs.com/sites/default/files/docs/FNCFCS_eco_soc_cul_UNSubmission.pdf

Article 2 of CERD: 1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 5 (a) of CERD:

a) The right to equal treatment before the tribunals and all other organs administering justice.

Action required by Canada:
In keeping with Jordan's Principle, Canada must follow the recommendations made by its own Auditor General with respect to the national Aboriginal child welfare system in Canada and take immediate steps to remedy jurisdictional barriers and funding problems of the Aboriginal child welfare system in Canada.

First Nations Education

The current funding levels of First Nations education, repeatedly highlighted by First Nations themselves, are insufficient and well below the funding levels given to provincial school systems by the Canadian Federal government. [18] National Chief Phil Fontaine recently stated how "resources to First Nations communities have been capped at 2% growth since 1996-a cap that does not keep pace with inflation or our young, booming population." [19] This funding cap towards First Nations education is intolerable, and clearly depicts inequities between the provincial education system and First Nations education.

Equality between First Nations education and provincial education is not present in Canada. In 2006, about "60% of First Nations youth (aged 20 to 24) living on reserve had not obtained a high school diploma or certificate a rate that has not improved over the last decade and is 4 times higher than that of non-Aboriginal youth in Canada." [20]

[18] AFN (2005) Resolution No. 53, Special Chiefs Assembly Oct 31-Nov 2, 2005. Regina, Saskatchewan.
[19] Fontaine, Phil (2009), AFN has a plan that benefits all. Editorial, The Toronto Star, January 15, 2009, http://www.thestar.com/comment/article/571159.
[20] Statistics Canada (2006) Educational Portrait of Canada, 2006 Census. Catalogue no. 97-560-X.

The underfunding of elementary education is a serious concern for NWAC. Many First Nations on-reserve schools are in miserable condition and disrepair. The Canadian government recognizes the need to improve First Nations education because it is affecting Canadian economic productivity, and politics. The solution, proposed by the Canadian Federal government (in the 2008 Federal Budget) was to integrate First Nations education into the provincial education system. (This solution does not consider the culture, language and identity of First Nation people, and could be viewed as another attempt by the government to assimilate First Nations.)

As stated in the 2008 Federal Budget Plan: "The government will spend $70 million over two years to improve First Nations education by encouraging integration with provincial systems."[21]

Current estimates show that First Nations children on reserves in Canada receive 2,000 to 3,000 dollars less funding for education than non-Aboriginal children and many of these schools and some of the conditions are deplorable. Some schools are infested with snakes, rats, black mould or sitting on contaminated waste dumps. There are many First Nations communities that do not have schools, in which children in these communities have to be sent hundreds of miles away to get an education. This shortfall means less funding for teachers, special education, teaching resources such as books, science and music equipment and other essentials that other children in Canada receive. There is no funding provided by INAC for the basics such as libraries, computer software and teacher training, the preservation of endangered First Nations languages, culturally appropriate curriculum or school principals.

In 2009, the Parliamentary Budget Officer (PBO) conducted a review of INAC's funding and policies for First Nations schools across Canada. Specifically, the PBO found that INAC reports that only 49 percent of schools on reserves are in good condition, 76 percent of all First Nations schools in BC and Alberta were in poor condition, and 21 percent had not been inspected at all.

Overall, the PBO found that all 803 First Nations schools will need replacement by 2030 but INAC does not appear to be on track to make that happen, as it appears to be significantly under-estimating what it needs to provide to maintain and build proper schools. "Thus according to the PBO projections, for FY2009-10, INAC's plans for capital expenditure are under-funded to the tune of between $169 million in the best case, and $189 million in the worst-case scenario annually, as depicted in the chart above. Thus, the annual INAC Planned Capital Expenditures according to its CFMP LTCP underestimates the likely expenditures compared to the PBO Best-Case and Worst-Case Projections (by more than 58%)."

In the words of a First Nation's child, Shannen Koostachin who was a Mushkegowuk Innanu from an isolated community, Attawapiskat First Nation in Ontario, Canada:
I have three brothers and three sisters. I am fourteen years old. I've graduated and finished elementary school called JR Nakogee Elementary School and going to go to school

---

[21] Department of Finance Canada (2008). The Budget Plan 2008: Responsible Leadership. Can be viewed at http://www.budget.gc.ca/2008/plan/table-eng.asp.

somewhere down south just to have a proper education. I want to have a better education because I want to follow my dreams and grow up and study to be a lawyer. For the last eight years, I have never been in a real school since I've started my education. For what inspired me was when I realized in grade eight that I've been going to school in these portables for eight long struggling years. We put on our coats outside and battle through the seasons just to go to computers, gym and library (Shannen's *Dream: (www.shannensdream.ca)***.**

Shannen's dream is a campaign for "safe and comfy schools" and culturally-based and equitable education on reserves. Shannen wrote to the United Nations Committee on the rights of the child in 2008 and was nominated for the international Children's Peace Prize in the Netherlands in 2008. She and her family made the difficult decision to send her hundreds of miles away from her family to get a proper education off-reserve. Shannen is noted as saying, that children "are losing hope by grade 5 and dropping out." Shannen died tragically in a car accident in the spring of 2010 at the age of 15, while attending school far away from her home.

NWAC reiterates the statements and the recommendations of the Auditor-General Report of 2011 at 5.27: Canadian and Northern Affairs Canada, in consultation with First Nations, should immediately develop and implement a comprehensive strategy and action plan, with targets, to close the education gap. It should also report progress to Parliament and to First Nations on a timely basis including: Indian and Northern Affairs Canada should undertake to obtain reliable and consistent information on the actual costs of delivering education services on reserves and compare the costs with those of providing comparable education services in the provinces **(5.51),** Indian and Northern Affairs Canada, in consultation with First Nations, should accelerate its efforts to develop and apply appropriate performance and results indicators along with targets **(5.46),** and, in consultation with First Nations and other parties, the Department needs to urgently define its roles and responsibilities and address the long-standing issues affecting First Nations elementary and secondary education. It also needs to improve its operational performance and reporting of results **(5.97: 2011 Auditor General's Report).**

The Assembly of First Nations' (AFN) has completed cost estimates of the required average annual increase of 6.3% since 1996 for First Nations education. The AFN states that the chronic underfunding of First Nations schools has created a First Nations education funding shortfall across Canada. NWAC supports this cost estimate.

In INAC's First Nations elementary and secondary education budget (totaling $1.56 billion in 2009-2010), there was a funding shortfall of $620 million in 2009-2010, beyond the 2% cap. There has been a cumulative funding shortfall of almost $1.2 billion since 1996 in elementary and post-secondary education. There is also a great need for services, such as: school libraries, technology (computers, connectivity, data systems); Sports and recreation; Vocational training; First Nations languages; and School board-like services.[22]

The ongoing problems lie in jurisdictional solutions in Canada. Although Canada is aware that there are ongoing structural, sanitary and funding shortfalls in the First Nations educational

[22] http://www.afn.ca/uploads/files/education/2._k-12_first_nations_education_funding_fact_sheet,_afn_2011.pdf.

system in Canada, Canada continuously fails to remedy a problem that it knows exists, as identified by Canada's Auditor-General in 2011 (cited above) and despite Article 5 of CERD:

Articles 5 (iv), (v) and (Vi) of CERD states: (iv) The right to public health, medical care, social security and social services; (v) The right to education and training; (vi) The right to equal participation in cultural activities; In addition, continues to fail to take immediate steps to remedy the problem, as stated in:

Article 7: States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Action required by Canada:
Canada must follow the recommendations made by its own Auditor General and take immediate steps to remedy the education shortfalls in infrastructure, funding, access and services in First Nations' schools in Canada to commensurate with provincial schools.

The Indian Act and Equality under the Law, Child Paternity Registration, Sexual Discrimination based on race, colour, descent, national or ethnic origin
The Department of Aboriginal Affairs and Northern Development Canada (formerly, Indian and Northern Affairs Canada), is the only government-mandated federal department in Canada which registers its citizens as a separate and distinct group in Canada, under the Indian Act. Its mandate is to register "Indians" under the Indian Affairs' Departmental Register in order to track and fund social programs based on Indian identity. Each "Indian" citizen belongs to a reserve and is allotted a number. Due to past inequities in the application of the registration, the Department of Indian Affairs was forced to change its registration policies in 1985, allowing both men and women to be registered on the same basis. However, this issue was never fully addressed and resulted in a subsequent legal case being brought forward by Sharon McIvor (BCCA 2009). Even though the Government recently passed and put into effect *Bill C-3 Equity in Indian Registration Act*, residual discrimination still exists today.

Article 5: Equality before the Law
The right to marry and choose one's spouse: The *Indian Act* does not limit the right of individuals to marry and to choose one's spouse. The basis of the current Indian registration system is to maintain continuity with the original Aboriginal peoples of Canada. The 1985 amendments (commonly referred to as 'the Bill C-31 Amendments") remedy the discriminatory provisions of the *Indian Act* and create registration rules that provide for non-entitlement of grandchildren to registration after two successive generations of parenting with a non-Indian.

In fact, this new system creates new violations related to discrimination and equality. Under this system, 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. However, there are two different classes of individuals created under subsections 6(1) and 6(2) respectively. The descendants of

those individuals classified under subsection 6(2) are more likely to reach the second-generation cut-off point one generation sooner that the descendants of those classified under subsection 6(1). First Nations women reinstated under Bill C-31 (after having been stripped of status in an overtly discriminatory manner) are more likely than their male relatives to be classified under subsection 6(2). This is why Bill C-31 contains residual discrimination, as noted in the Sharon McIvor case.

Furthermore, the Indian Act 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. While an individual can marry whom he or she chooses, as noted by Canada's report, such a decision is not made without negatively affecting his or her equal right to pass on status and membership rights to their descendants. This further negatively affects a person's right to culture and to pass on their culture, which is intimately tied to the land, to their descendants. Canada's assertion that the registration system has as its purpose to "maintain continuity with the original Aboriginal peoples of Canada" does not reflect the well-documented reality that this registration system will in fact lead to the elimination of individuals entitled to register under the *Indian Act*. This is because of the overly rigid, still residually discriminatory registration system created by the 1985 Amendments.

This situation requires legislative and policy changes, based on full and effective consultation and collaboration with Indigenous peoples and representative organizations. Indigenous women's organizations must play a key role, given the specific discriminatory impact this legislation has had on Indigenous women and their descendants.

Actions Required of Canada:
In consultation and cooperation with Indigenous Peoples and representative organizations, including Indigenous women's organizations, Canada must implement policy and legislative changes that will remove the residual gender discrimination against First Nations women and their descendants and redress the current discriminatory erosion of rights to membership and status under the *Indian Act* of all First Nations individuals.

Article 1: Personal and Human Rights Infringements
Paternal Registration issue under the Indian Act: In addition, in order for a Native woman's child to be registered as an Indian and to receive the entitlements that follow from this status, Native women who hold Indian status in Canada are presently being informed that they must register the name of the paternal father of their child on the child's birth certificate, in order for their child to receive Indian registration and the entitlements which flow from that registration. NWAC maintains that this contravenes the following CERD articles:

Article 1 (1), (2), (3), (4) of CERD reads:
1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The **CERD** article above guarantees that discrimination will not occur and that the full enjoyment of human rights will be provided equally and on an equal footing between a country's citizens in the political, economic, social, cultural or any other field of public life between its citizens.

NWAC maintains that other ethnic groups in Canada are not being compelled to identify the name of the father of their child(ren) on provincial vital statistics registration records, in order to receive provincially- funded medical care and other benefits which derive from their registration. A non-aboriginal mother can refuse to identify the father of her child and still receive educational, medical and social services.

NWAC maintains that this anomalous treatment by Canada under the Indian Act, contravenes Article 1, subsections 1-4 of CERD above. As a result of being denied registration and the services which flow from it, Native women and their children are being denied full enjoyment of human rights which must be provided equally and on an equal footing between citizens in the political, economic, social, cultural or any other field of public life," as guaranteed above, as well as, in the following CERD rights listed, immediately below.

Section 5 (d)(i)(ii), (iii), (iv), (v), (vi), (vii), (viii), and (e) of CERD:
(i) The right to freedom of movement and residence within the border of the State;
(ii) The right to leave any country, including one's own, and to return to one's country;
(iii) The right to nationality;
(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(e) Economic, social and cultural rights, in particular:

By denying Indian registration to a Native woman's child who chooses not to reveal the name of the paternal father of the child, the Native woman is also affected by the denial of her child's denial of his/her inherent right to an Indian registration identity. This ultimately severely affects a Native woman's right to live freely with her child, including her own right and the child's right to move freely, to choose and be proud of her own and her child's national, ethnic and racial identity (in this case their Indian identity), as well as, her choice of spouse and her right to choose where to live and to own and inherit property in the Native community.

By denying a Native mother the right to register her child and compelling her to choose between identifying her child's paternity on the Indian Register in order to receive vital medical and social services, contravenes her own and her child's "right to equal enjoyment and the exercise of their human rights and fundamental freedoms." She is also classified as a group with "separate rights" under Article 1(4) of CERD and in fact, they are also denied the above rights, cited in Articles 5 (d) (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) and 5(e) of CERD (above).

The Native Women's Association of Canada has attempted to bring this matter to the attention of Canada with little avail under Article 2 (c). In addition, NWAC maintains that this continued discrimination by Canada is also in contravention of Articles 2(1) (a)(b)(c)(d)(e) and 5 (a) and 6 of CERD below, which state:

Article 2: States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

> (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to en sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
> (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
> (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
> (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
> (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 5 (a) The right to equal treatment before the tribunals and all other organs administering justice;

Article 6 of CERD, further states: States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such

discrimination. As an institution and in effect, a tribunal, Indian Affairs' Indian Registrar is arbitrarily compelling Native women to name the paternal identity of their children in order to receive needed services, infringing their fundamental human right and freedoms. Indian Affairs is in fact, acting as its own appeals tribunal through its internal appeals system, which contravenes Articles 5(a) and 6 of CERD, cited previously.

Action required by Canada:
NWAC demands that Canada through the Indian registration of a child's paternity, stop denying equal rights to Native women and their children by ceasing the requirement of having native women register the paternal identity of their child(ren) in order to receive Indian registration and the benefits which flow from that registration, under Indian Registration Regulations.

The Indian Act and Matrimonial Rights - Personal and Property Rights

Another matter which is still yet unresolved relating to Native women's sexual, ethnic, personal and property rights (CERD Articles 1 and 5) are the membership, registration and land ownership (sections 8-20) of the *Indian Act.* Sections 8-20 of the *Indian Act* disallows a person who is not a duly registered member of a First Nation under the *Indian Act*, to receive benefits from registration, own lands or to give or will those lands to their unregistered children. Nor can a native woman acquire any ownership of the matrimonial home when it is registered in the name of the husband on a certificate of possession (CP) under section 20 of the *Indian Act*. As a result, some native women have been left abandoned, following the dissolution of marriage dissolution.

This matter has been of great concern to the Native Women's Association of Canada for many years now because in effect, many of the affected individuals are native women who lost their right to live in the matrimonial or family home when their marriage or common-law relationship dissolved and it forces women to stay in abusive and deteriorating marriages to prevent the loss of their rights.

In an attempt to rectify this problem, the Canadian Government through the Department of Aboriginal Affairs (Indian Affairs), has promoted the enactment of Matrimonial Real Property (MRP) Legislation in 1996. The MRP legislation when enacted requires First Nations to address any resulting gender inequities as a result of marriage dissolution, by opting out of the land provisions of the Indian Act. In exchange, the new legislation must allow First Nations women to seek an appropriate remedy when their marriage dissolves, either under provincial enactment, through remedial legislation, through mediation and negotiation or by any other instrument deemed appropriate to address this inequity.

However, since 1996, only 24 First Nations of 651 in Canada have enacted this MRP legislation to date because the MRP legislation is onerous for First Nations communities. First Nations are required to invest in specific training with limited staff, find the legal fees to draft the legislation and essentially, extinguish the nature of their existing land rights under the Indian Act. For impoverished communities with little funds and capacities, many First Nations are reluctant to enact the MRP legislation, as the demonstrated lack of total enactments shows, since 1996. This

is also a long-standing issue which NWAC has been attempting to resolve with very limited success.

Therefore, NWAC submits that the Indian Act and the proposed MRP legislation restrict the following First Nations rights, under **Articles 5 (d) (iii), (iv), (v), (vi), of CERD:**

Section 5 (d) (iii), (iv), (v), (vi) of CERD reads as follows:
(iii) The right to nationality; (iv) The right to marriage and choice of spouse; (v) The right to own property alone as well as in association with others; (vi) The right to inherit;

First Nations women and their children who have lost their rights to live on the First Nations reserve after the dissolution of a marriage, affects their decisions to chose who they to marry, their right to own the property even though they have lived with their spouses and the right of her child(ren) to own and inherit property. This is because too often the certificate of possessions (CP) lands is registered in her former husband's name. In addition, NWAC maintains that the following additional rights can also be profoundly affected in the event of a marriage dissolution: the woman may also lose her rights to be a free and active member of that community, to express her opinions and thoughts and to participate and benefit, culturally, economically and culturally, from that community, as per articles 1 of CERD and 5 (vii), (viii), and 5 (e) below:

Article 5:
(vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression; (e) Economic, social and cultural rights, in particular:

Action Required by Canada:
NWAC calls on Canada to abandon the MRP legislation, and work with the Native Women's Association of Canada to develop realistic remedies to resolve and ensure that native women's human rights and freedoms are secure both on and off-reserve in Canada when her marriage or relationship dissolved. She must have the same rights as everyone else and receive the same remedies with respect to the division of property on-reserve.

Criminal Justice - Bill C-10 - Discrimination, Insecurity and Disregard for Human Rights - Excerpts

UN Declaration, Article 1:
Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

And at Article 7:
1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples

And at Article 42: ... States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

And at Article 43: The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Human Rights Council, Human rights in the administration of justice, in particular juvenile justice, UN Doc. A/HRC/RES/18/12 (29 September 2011) (adopted without vote), para. 8:

Recognizes that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards on human rights in the administration of justice, and calls on States parties to the Convention on the Rights of the Child to abide strictly by its principles and provisions;

And at Para. 9: Encourages States that have not yet integrated children's issues in their overall rule of law efforts to do so, and to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency as well as with a view to promoting, inter alia, the use of alternative measures, such as diversion and restorative justice, and ensuring compliance with the principle that deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time, as well as to avoid, wherever possible, the use of pretrial detention for children;

And at Para. 10: Encourages States to foster close cooperation between the justice sectors, different services in charge of law enforcement, social welfare and education sectors in order to promote the use and improved application of alternative measures in juvenile justice;

And at Para. 11: Stresses the importance of including rehabilitation and reintegration strategies for former child offenders in juvenile justice policies, in particular through education programmes, with a view to their assuming a constructive role in society;

And at Para. 14: Calls upon States to enact or review legislation to ensure that any conduct not considered a criminal offence or not penalized if committed by an adult is not considered a criminal offence and not penalized if committed by a child, in order to prevent the child's stigmatization, victimization and criminalization;

And at Para. 18: Stresses the importance of paying greater attention to the impact of the imprisonment of parents on their children, while noting with interest the day of general discussion on the theme "The situation of children of incarcerated parents," to be organized in 2011 by the Committee on the Rights of the Child;

Canadian Bar Association, "Submission on Bill C-10: Safe Streets and Communities Act", October 2011, at 2-3 further states: Even more important than our concerns about the process is our concern about the general direction of these initiatives. The CBA is committed to public safety, and there is broad consensus among reputable Canadian criminal justice experts as to

what is most effective in achieving a safer society. At its 2011 Canadian Legal Conference, the CBA publicly urged that Canada adopt:

- a more health based response to the mentally ill, in place of incarceration;
- policies and laws that recognize the historical, social and economic realities of aboriginal people;
- a judicial "safety valve" to ensure justice in sentencing; and
- a policy of transparency in regard to the cost of any future criminal justice initiatives.

In their view and in NWAC's view as well, the initiatives in Bill C-10 are in direct contrast. They adopt a punitive approach to criminal behavior, rather than one concentrated on how to prevent that behavior in the first place, or rehabilitate those who do offend. As most offenders will one day return to their communities, we know that prevention and rehabilitation are most likely to contribute to public safety. The proposed initiatives also move Canada along a road that has clearly failed in other countries. Rather than replicate that failure, at enormous public expense, we might instead learn from those countries' experience.

And at 6: The CBA Section and its Committee on Imprisonment and Release believe that these proposals are too limited, and omit reference to the fundamental values and principles of human rights.

Our submission considers the proposals based on a strong historical and legal foundation, anchored in an unwavering commitment to human rights in prison. We adopt this perspective not only because we believe it to be the right approach, but also because it is the approach that will best advance the goal of improved public safety. Human rights are not something that should be "balanced" against prison discipline and control, or prisoner accountability. Rather, they are something through which prison discipline and control must be interpreted and exercised in a professional manner. Legitimate discipline and control is necessary, but can only be effective in holding offenders accountable, promoting positive change in the individual and protecting public safety if it is inherently moral and justifiable.

And at 14: ... documents and studies ... have acknowledged Canada's over-reliance on incarceration, the need for alternative sanctions, the limited success of imprisonment in controlling or **deterring** crime, the impact of incarceration on particular populations, notably aboriginal people, and the extremely high cost of incarceration in both human and financial terms.

The CBA Section generally agrees with these observations. We have urged the federal government to provide financial support to provinces and territories to encourage the use of alternatives at the front end of the sentencing process and to diminish the use of imprisonment. We have also urged legislative amendments to promote alternative options in appropriate circumstances, and encouraged reliance on the judiciary to decide the most appropriate sentence after hearing firsthand the facts of each individual case. NWAC adopts the CBA's view that conditional sentences have helped to reduce the over-reliance on incarceration in Canada, and have gone a long way to ameliorating several previous problems.

And at 24: In addition to the costs of incarceration, particularly in circumstances where the offender and the offence are not a danger to the community, there will be enormous resulting social costs. For example, if a parent is incarcerated rather than serving a conditional sentence that allows them to continue to fulfill work and childcare responsibilities, it may perpetuate a cycle of child poverty with all associated risk factors. Further, the lack of judicial discretion to achieve a just result in the particular case will have a disproportionate impact on populations already over-represented in the justice system, notably the economically disadvantaged, Aboriginal people, members of visible minorities and the mentally ill. For example, offenders from Canada's northern communities are usually incarcerated in facilities far from home. Families may not have financial means to maintain contact with the offender while incarcerated, given the costs of transportation and accommodation. This isolates and alienates the offender and undermines rehabilitation and reintegration efforts.

Bill C-10 would necessarily restrict and limit judicial discretion on sentencing. That discretion forms a fundamental part of Canada's criminal justice system.

And at 25-26: The CBA Section has consistently opposed the use of mandatory minimum sentences (MMS)[23] as we believe that they:

- do not advance the goal of deterrence. International social science research has made this clear.2 The government itself has stated that:

- The evidence shows that long periods served in prison increase the chance that the offender will offend again....In the end, public security is diminished, rather than increased, if we "throw away the key".

- do not target the most egregious or dangerous offenders, who will already be subject to very stiff sentences precisely because of the nature of their crimes. More often, less culpable offenders are caught by mandatory sentences and subjected to extremely lengthy terms of imprisonment.
- have a disproportionate impact on those minority groups who already suffer from poverty and deprivation. In Canada, this will affect Aboriginal communities, a population already grossly over represented in penitentiaries, most harshly.4

- subvert important aspects of Canada's sentencing regime, including principles of proportionality and individualization, and reliance on judges to impose a just sentence after hearing all facts in the individual case.

And at 90 (Conclusion): At this critical stage, the CBA Section believes that the proposed amendments the CCRA will actually move Canada further from one of the fundamental criteria for a correctional system for the 21st century - that in law, policy and practice, the system must demonstrate its overriding commitment to the protection of human rights. In addition, Bill C-10's proposals will worsen Canada's well documented history of disproportionately incarcerating its Aboriginal people.

[23] The Canadian Bar Association, Submission on Bill C-10- Safe Streets and Communities Act, Art. 25-26.

The CBA Section's work in the area of criminal justice has some consistent themes, and rests on several important tenets – a long history of CBA policy, a commitment to human rights and constitutional values, a strong belief in justice, fairness, equality and procedural safeguards, a goal of having an effective and efficient criminal justice system, and our daily experience in Canadian courts in every corner of this country. We have offered our critique of Bill C-10 on the basis of that solid foundation. The politics of criminal justice should not trump the evidence and knowledge available as to what are the most effective criminal justice policies and best use of public resources.

In sum, the CBA Section believes that many of the positive reforms of the past 30 years, reforms that have led to humanizing Canada's criminal justice and correctional system, and building for Canada an enviable international reputation for respecting human rights, would be imperiled with the passage of the Omnibus Bill.[24]

Our final suggestion is that efforts be made to consult with Aboriginal representatives on the systemic impact of these proposed changes, and how Aboriginal youth might be effectively protected from potential discrimination or harm. The situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General (Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people):[25]

> "In many countries, however, Indigenous peoples do not have equal access to the justice system and encounter discrimination of all kinds in the operation of the justice system. This is due to persistent racism in many societies, ignorance of indigenous cultures, the failure by official State institutions to accept linguistic and cultural differences and ignorance of Indigenous law and customs. As a result, Indigenous people tend to be overrepresented in the criminal justice system, which reflects the prevailing inequality and injustice."

Office of the Correctional Investigator (OCI) further states[26]:

... Aboriginal offenders are as a result of unique systemic and background factors, more adversely affected by incarceration and less likely to be rehabilitated by it, because imprisonment is often culturally inappropriate and facilitates further discrimination towards them in the justice system.

---

[24] See also Office of the Correctional Investigator, Report Finds Evidence of Systemic Discrimination Against Aboriginal Inmates in Canada's Prisons, Ottawa, October 16, 2006.British Columbia Representative for Children and Youth (Mary Ellen Turpel-Lafond), "Submission to the House of Commons Standing Committee on Justice and Human Rights respecting Bill C-10 Youth Criminal Justice Act Amendments", October 27, 2011, at 14:"In conclusion it is my respectful observation that the evidence is not clear in support of many of the amendments before you. I recommend that changes be made to make these amendments consistent with the evidence on crime prevention, reduction and improving the lives of Canadian adolescents, especially those from vulnerable populations."

[25] General Assembly Report, The situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General (Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people)UN Doc. A/59/258 (12 August 2004), at para.29.

[26] (Michelle Mann), "Good Intentions, Disappointing Results: A Progress Report on Federal Aboriginal Corrections, "November 10, 2009, at 20

And at 21: The proportion of Aboriginal offenders under community supervision (30%) is significantly smaller than the proportion of non-Aboriginal offenders (40%) serving their sentences on conditional release in the community.23 Aboriginal offenders under supervision in the community are more likely to be on a more restrictive form of release – either day parole or statutory release, rather than full parole.

The proportion of full parole applications resulting in National Parole Board reviews is lower for Aboriginal offenders. The percentage of full parole waived due to incomplete programs continues to increase at a higher rate for Aboriginal offenders than for non-Aboriginal offenders (33.4% from 2002/03 to 41% 2006/07 for Aboriginal offenders and 26.6% to 31.4% for the same period for non-Aboriginal offenders).24 The percentage of denied recommendations to grant full parole continued to increase for Aboriginal offenders while decreasing for non-Aboriginal offenders (24.3% compared to 5.2%).25 The gap in outcomes has significantly increased. (13.1% in 2005/06 to 19.1% in 2006/07).26 Aboriginal offenders are over-represented among those referred for detention rather than parole and their parole is more likely to be revoked for breach of conditions.

The greater likelihood of statutory release for Aboriginal offenders equals more time spent incarcerated and less time in the community under supervision for programming/intervention than for non-Aboriginal offenders. While CSC does not direct the National Parole Board, the Service does have control over many of the factors that contribute to delayed parole for Aboriginal offenders.

The nature of the underlying offence is one factor in later parole rates for Aboriginal offenders, given their proportionately higher representation in the commission of violent crime. Yet, it is unlikely that this alone accounts for the disproportionate rates. Systemic discrimination, culturally laden notions of accountability, over-classification, over-segregation, and a lack of availability of Aboriginal specific programs while incarcerated are mitigating factors and may all play a role in the granting of parole to Aboriginal offenders.

The situation of Aboriginal women in terms of security classification, access to programs and timely conditional release is even more problematic. The OCI has noted a significant increase in the number of women offenders returning to the community on statutory release rather than on day or full parole as well as a corresponding increase in the number of waivers and postponements of National Parole Board hearings by women offenders. Both of these trends are most evident among Aboriginal women**.**

In the case of the over incarceration of Aboriginal women and girls, it is hoped that the Government could hold meaningful engagement sessions for those involved in Canadian institutions, including those linked to public safety, corrections and the judicial system in a process of reflection and change. NWAC encourages the Government to set and reach gender specific goals, outcomes, strategies, and greater accountability mechanisms to improve the conditions for Aboriginal women in conflict with the law.

NWAC thanks you for taking the time to review this 2012 CERD submission. For access to this and other reports, please visit our site at: **http://www.nwac.ca**