



Native Women's Association of Canada

**JOINT SUBMISSION BY THE NATIVE WOMEN'S ASSOCIATION OF CANADA TO
THE HUMAN RIGHTS COUNCIL AS PART OF THE SECOND UNIVERSAL
PERIODIC REVIEW OF CANADA'S HUMAN RIGHTS OBLIGATIONS IN 2013**

OCTOBER 9, 2012

1. The Native Women's Association of Canada (NWAC) is an Indigenous women's representative organization in Canada that promotes the human rights of Indigenous women, their families and communities. NWAC is in special consultative status with the United Nations Economic and Social Council. NWAC was founded in 1974 as an aggregate of 12 Aboriginal women's groups from coast to coast to coast, with the goals of preserving Aboriginal culture, achieving equal opportunity for Aboriginal women, and having a role in shaping legislation relevant to Aboriginal women.

2. In this submission to the Human Rights Council (HRC) regarding the Universal Periodic Review of Canada, to be held in May 2013, NWAC would like to highlight several areas of concern regarding Canada's fulfillment of its human rights obligations and commitments, outlined below. Recommendations are in bold.

Violence Against Aboriginal Women in Canada:

3. Young Aboriginal women are 5 times more likely than other women of the same age to die as a result of violence. 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 racial discrimination against Aboriginal women. In a report based on the research provided by the *Sisters In Spirit Initiative*, NWAC noted that there were over 582 missing or murdered Aboriginal women in Canada in 2010.

4. 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.¹ Its goal is to examine 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, as well as 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 were found murdered along the Highway of Tears.

5. Although NWAC was granted full standing in the Inquiry, 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) despite the fact that the Vancouver Police Department, the Criminal Justice Branch of the Attorney General's Ministry, and the Royal Canadian Mounted Police – all of whose conduct is under scrutiny – are each represented by publicly funded legal counsel. This denial of funding has precluded NWAC, along with other public interest groups who were granted standing but denied funding, to participate in the Inquiry.

6. Due to the BC Commission of Inquiry's denial of funding to NWAC, Aboriginal women and girls were 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 gathered intimate knowledge of 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.

7. 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 protecting vulnerable Aboriginal

¹ See terms of reference and complete information on the Missing Women Commission of Inquiry at: <http://www.missingwomeninquiry.ca/>

women in the long term by refusing their representative bodies, nor is it providing equal treatment before the law.

Action required by Canada:

NWAC has and is calling upon the Government of Canada to conduct a National Inquiry into these missing and murdered Aboriginal women in Canada and to develop a National Plan of Action for Aboriginal Women.

First Nations Child Welfare System in Canada:

8. 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 was 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.²

9. According to the 2005 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".³ According to federal government figures the number of status Indian children entering child welfare care rose 71.5% nationally between 1995 and 2001.⁴ 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 evidence of violations of the human rights of First Nations children.

10. 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.⁵

11. 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 2013.⁶

² <http://www.jhr.ca/rightsmedia/2009/05/today%E2%80%99s-canadian-aboriginal-children-the-origin-of-tomorrow%E2%80%99s-government-apology/>

³ KPMG LLP. Indian and Northern Affairs Canada: Review of Wen:De The Journey Continues. Ottawa, Ontario, July 30, 2010.

⁴ *Ibid.*

⁵ 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.

⁶ 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.

Action Required by Canada:

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.

Jordan's Principle: Federal-Provincial Funding Jurisdictional Disputes:

12. Jordan River Anderson was 5 years old when he died in the hospital due to a federal-provincial funding jurisdictional dispute.⁷ 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.

13. 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.⁸

14. Canada's unwillingness to remedy the damage caused by its policies regarding its federal Aboriginal education and child welfare system is a further endangerment to the wellbeing of Aboriginal youth, families and communities.

Action required by Canada:

Jordan's Principle should be formally implemented as a requirement in all federal, provincial and territorial policies pertaining to Aboriginal child welfare.

First Nations Education:

15. 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.⁹ Former National Chief Phil Fontaine had repeatedly 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."¹⁰ The current National Chief Shawn Atleo continues to raise the issue of the funding cap towards First Nations education which clearly depicts inequities between the provincial education system and First Nations education.

16. 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.

17. 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

⁷ <http://www.fncfcs.com/jordans-principle/>

⁸ <http://www.straight.com/article-254075/cindy-blackstock-and-andrea-auger-reconciliation-cant-be-empty-promise-first-nations-children>

⁹ AFN (2005) Resolution No. 53, Special Chiefs Assembly Oct 31-Nov 2, 2005. Regina, Saskatchewan.

¹⁰ Fontaine, Phil (2009), AFN has a plan that benefits all. Editorial, The Toronto Star, January 15, 2009, <http://www.thestar.com/comment/article/571159>.

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 Gender Discrimination:

18. 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” status. Each “Indian” citizen belongs to a reserve and is allotted a number. There has been long-standing sex discrimination in the Indian Act which favours Indian men and their descendants - with respect to eligibility for status and transmission of status - over Indian women and their descendants. In 1985, some changes were made when the equality guarantees of Canada’s new Charter came into force. Indian women who had previously lost their status because they married non-status men were allowed to be registered, as were their children. However, the 1985 amendments (commonly referred to as Bill C-31) did not give the Bill C-31 women and their children the same registration status as Indian men and their children who never lost their status because of sex discrimination. Because the 1985 amendments did not fully eradicate the sex discrimination Sharon McIvor challenged the status registration provisions of the Indian Act in *McIvor. v. Canada* (BCCA 2009). In response to the B.C. Court of Appeal decision in this case, the Government of Canada recently passed and put into effect *Bill C-3 Gender Equity in the Indian Registration Act*, which, once more, corrects some of the sex discrimination, this time allowing some grandchildren to be registered. However, the sex discrimination has not been completely removed and there are still thousands of Aboriginal women and their descendants who are denied status registration under the Indian Act because of sex discrimination. Ms. McIvor has filed a petition with the United Nations Human Rights Committee. (McIvor UN Petition can be found at: <http://povertyandhumanrights.org/wp-content/uploads/2011/08/McIvorApplicantsPetition1.pdf>)

19. 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.

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.

Unstated, Unrecognized and Unknown Paternity Registration Issues Under the *Indian Act*:

20. First Nations' women who are not married and who hold Indian status in Canada must register the name of the child's father on the birth certificate in order for the child to receive Indian registration and the entitlements which flow from this designation. This is particularly problematic when one considers that those mothers who are unable to obtain the signature of the father on the child's birth certificate often fall into other disadvantaged categories, such as young mothers, single mothers, or the victims of sexual assault. For example, 45 per cent of babies born to status mothers under age 15 are likely to fall into this legislative trap.¹¹ Alarming, more than 50,000 children were identified as either deprived of status or granted only partial status under the policy on paternity between 1985 and 1999 alone:

Current INAC registration policy requiring the father's signature and other forms of proof of paternity in order for his registration to factor into the registration entitlement of his child, has resulted in both incorrect and no registration for children.

The gravity of the unstated paternity problem is evident in statistics. Approximately 37,300 children born to women registered under 6(1) between April 17, 1985 and December 31, 1999 were recorded as having unstated fathers. Estimates indicate that as many as 13,000 children of 6(2) registered mothers in that same time period may have unstated fathers and are therefore ineligible for registration.¹²

Furthermore, when a mother does indicate who the father is but he refuses to sign because he is afraid to be forced to pay child support, the declaration is deemed unrecognized by the Department of Aboriginal Affairs and the child is not registered accurately and may not receive the accurate registration or entitlements.

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) and/ or having the requirement of the father's signature on the birth registry in order to receive Indian registration and the benefits which flow from that registration, under Indian Registration Regulations and/or policies.

The *Indian Act* and Matrimonial Rights - Personal and Property Rights:

21. Sections 8-20 of the *Indian Act* disallow 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 bequeath those lands to their unregistered children. Moreover, a First Nations' woman cannot 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 First Nations' women have lost their property following the dissolution of marriage, or felt compelled to stay in abusive and deteriorating marriages to prevent the loss of their rights.

¹¹ Winnipeg Free Press: "Native Women Fight Federal Status Policy Denied Rights due to Lack of Dad's Signature" Online: <http://www.winnipegfreepress.com/local/native-women-fight-federal-status-policy-145725285.html> retrieved on October 2, 2012.

¹² Michelle M Mann, "Indian Registration: Unrecognized and Unstated Paternity" online: http://www.lynngehl.com/uploads/5/0/0/4/5004954/mann_2005.pdf at v.

22. In an attempt to rectify this problem, the Canadian Government, through the Department of Aboriginal Affairs (Indian Affairs), promoted the enactment of Matrimonial Real Property (MRP) Legislation in 1996. 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 appropriate remedies when their marriages dissolve, either under provincial enactment, through remedial legislation, through mediation and negotiation or by any other instrument deemed appropriate to address this inequity.

23. However, since 1996, only 24 First Nations of 651 in Canada have enacted this MRP legislation 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, these fees and requirements are prohibitive, as the demonstrated lack of total enactments shows.

24. NWAC maintains that the following additional rights can also be profoundly affected in the event of 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.

Action Required by Canada:

NWAC calls on Canada to abandon the MRP legislation as it has been written in the past, and to work with the Native Women's Association of Canada and First Nations Governments 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 marriages or relationships dissolve.

Safe Streets and Communities Act (Formerly Bill C-10): Discrimination, Insecurity and Disregard for Human Rights:

25. NWAC has concerns about the lack of access to justice and high rates of incarceration of Aboriginal Peoples, and specifically Aboriginal women, 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.

26. In their view and in NWAC's view as well, the initiatives in Bill C-10 are in direct contrast to the above goals. Bill C-10 adopts a punitive approach to criminal behaviour, rather than preventative or rehabilitative measures. 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 recently enacted legislation also moves 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.

27. Many Aboriginal women have come to be locked up within federal penitentiaries as a result of a long history of dislocation and isolation, racism, brutal violence as well as enduring a constant state of poverty beyond poor.

28. By and large, the *Indian Act* registration provisions have created issues of dislocation and isolation for First Nations women. Many Aboriginal women have been forced to leave their families and communities

relocating to urban settings. The challenges of living in an urban setting are many including contending with systemic barriers to housing and employment needs.

29. Lack of social supports and isolation from culture and family are other issues that may contribute greatly to an Aboriginal woman's health and quality of life in an urban setting. For some Aboriginal women, it is the legacy of the Residential School system that has forced them to leave their home communities in search of a better life for themselves and their children. However, once in the city they may find themselves contending not only with the issues that forced them to leave (such as domestic violence and poverty) but also racial discrimination and issues of isolation and dislocation.

30. 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).

31. 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%) The gap in outcomes has significantly increased. (13.1% in 2005/06 to 19.1% in 2006/07) 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.

32. 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 Correctional Services Canada (CSC) does not direct the National Parole Board, they do have control over many of the factors that contribute to delayed parole for Aboriginal offenders.

33. 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.

34. The situation of Aboriginal women in terms of security classification, access to programs and timely conditional release is even more problematic. The Officer of the Correctional Investigator 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.

Action Required by Canada:

In the case of the over incarceration of Aboriginal women and girls, the Government should 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.