



Native Women's Association of Canada

**SUBMISSION OF THE NATIVE WOMEN'S ASSOCIATION OF
CANADA REGARDING THE UNIVERSAL PERIODIC REVIEW OF
CANADA BY THE HUMAN RIGHTS COUNCIL**

SEPTEMBER 8, 2008

1. The Native Women's Association of Canada (NWAC) is an Indigenous women's representative organization in Canada that promotes the human rights of Indigenous women, their families and communities. NWAC is in special consultative status with the United Nations Economic and Social Council.
2. In this submission to the Human Rights Council (HRC) regarding the Universal Periodic Review of Canada, to be held in February 2009, 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.

The United Nations *Declaration on the Rights of Indigenous Peoples*

3. NWAC supports the "Joint Submission to the United Nations Human Rights Council in regard to the Universal Periodic Review Concerning Canada" submitted by the Grand Council of the Crees (Eeyou Istchee) *et al.*ⁱ.
4. NWAC specifically recommends that Parliament require regular reports from the Minister of Indian and Northern Development, and all other relevant departments such as Status of Women Canada, on implementation of the Declaration. Federal, provincial and territorial human rights institutions should collaborate with Aboriginal peoples' organizations, including NWAC, to better understand and integrate the Declaration in their work.

Violence against Aboriginal Women and Girls

5. Canada must do more to address the discrimination and systemic gendered racism that is the root cause of the widespread racialized, sexualized violence faced by Aboriginal women and girls. **All levels of government should collaborate on a national plan of action that would include increased access to emergency shelters and traditional housing for Aboriginal women and families, and enforcement of court and band protection orders. The NWAC Sisters in Spirit Initiative has also called for reforms in the way police handle and respond to missing persons complaints.**ⁱⁱ
6. **The systematic collection and public distribution of disaggregated data that includes gender and Aboriginal identity is needed to expose barriers that prevent Aboriginal women and girls from enjoying equality.**

Bill C-21: Amendments to the *Canadian Human Rights Act*

7. Bill C-21 was passed in June 2008. The Bill removes an exemption under the *Canadian Human Rights Act* (CHRA) that meant that while First Nations persons have been able to go to the Canadian Human Rights Commission to make complaints of discrimination in other areas of federal jurisdiction, the functioning of the *Indian Act* has been exempt from such complaints.

8. NWAC has long called for First Nations women to have access to the CHRA as a tool to fight against the discrimination experienced under the *Indian Act*. However, during the debate over the amendment to the CHRA, NWAC also cautioned that time and resources were needed for the Commission and for Aboriginal peoples to become familiar with the application of the CHRA to Aboriginal peoples' lives and experiences.ⁱⁱⁱ NWAC also called for the provision of resources to First Nations communities to enable the development of conflict resolution processes based on customary law and practices.
9. Bill C-21 requires that the government and First Nations carry out a joint implementation study. **NWAC recommends that Canada take the necessary measures to ensure that Aboriginal women are full partners in the joint implementation study called for by Bill C-21. The UN *Declaration on the Rights of Indigenous Peoples* should be used as a source of international human rights norms in this process.**

Matrimonial Real Property

10. In 1986, the Supreme Court of Canada ruled that provincial and territorial laws on matrimonial real property (MRP) do not apply to reserve land. The *Indian Act* also does not contain any laws that apply to MRP on reserve land. This gap in the law means that when a marriage or relationship ends, couples who live on reserve have no legal framework to help them resolve any disputes over their matrimonial real property. This lack of legal clarity and protection also means that women who are experiencing violence, or who have become widowed, may lose their homes on the reserve.
11. On June 20, 2006 the federal government appointed a Ministerial Representative to lead a process of consultation on matrimonial real property in collaboration with three partners – NWAC, the Assembly of First Nations (AFN), and Indian and Northern Affairs Canada – with the goal of reaching a consensus on a solution to MRP. The participants raised very serious concerns regarding the short time frame of three months for completion of the project. As noted in NWAC's submissions to Parliamentary Standing Committees, NWAC believes a full year was necessary to conduct adequate consultation.
12. In the three months provided, NWAC held extensive meetings across the country with Aboriginal women who had been directly impacted by the lack of matrimonial property laws that apply on reserve. From the very first meeting it was clear that the systemic issues of violence against women, limited access to justice, poverty, housing crises and the power of *Indian Act* Chiefs and Councils were critical non-legislative issues that needed to be addressed alongside any legislative amendment.

13. In March 2008, the federal government unilaterally introduced Bill C-47, *the Family Homes on Reserve and Matrimonial Interests or Rights Act*. The Bill did not include acknowledgement of or support for the critical non-legislative measures identified by Aboriginal women.
14. Equality rights for Aboriginal women include both their individual equality rights and their rights as members of their nations. NWAC is concerned that inadequate protection of the collective dimensions of their equality rights could lead to the diminishment of Aboriginal women's rights. Furthermore, legislation alone will create the perception among Canadians that another step has been taken to secure equality for Aboriginal women when the reality will be that little has changed. Aboriginal women have learned through their own experiences of the legislative changes contained in Bill C-31 and the lack of consultations with Aboriginal women leading up to its enactment that this is a recipe for disaster. **Legal rights must be accessible and enforceable to be meaningful. NWAC is continuing to call for concrete measures to ensure that the non-legislative measures recommended by Aboriginal women are in fact implemented.**

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

15. Bill C-31, *An Act to Amend the Indian Act*, was adopted by Parliament in June 1985. Its intended purpose was to eliminate gender discrimination within the *Indian Act* by which Indian status was denied to First Nations women who had married non-First Nations men -- as well as to the children of these couples -- while granting Indian status to non-Indigenous women who married First Nations men. Although Bill C-31 was a response to Aboriginal women's advocacy, in particular the Lavell case in the Supreme Court of Canada and the decision of the United Nations Human Rights Commission in the case of Sandra Lovelace (Nicholas), the provisions of the Act were unilaterally enacted by the government of the day. Though some have seen the enactment of Bill C-31 as a victory for Aboriginal women, that victory was offset by discriminatory provisions in the new legislation and by implementation measures which deepened the hardships faced by Aboriginal women and their children.
16. Bill C-31 provided for the return of Indian status to women who lost status under the *Indian Act*, as well as to their children. However, a Bill C-31 reinstated can only pass her own status on to her children if the father also has status and the father's name appears on the birth certificate. No such restriction applies to women who had never lost their status.
17. If the mother does not provide the name of the father for the birth certificate, then the assumption is made by the government is that the father is not entitled to be registered as status. There are a number of reasons why a woman would not state the name of the father of her child, including issues relating to personal safety or experiences of violence, a desire for privacy, or to avoid custody or access claims. Research conducted in 2001 suggested that about one-half of the unstated

- paternity cases were intentional on the part of the mother. The father's name also may not appear on the birth certificate because of administrative rules. If the parents are unmarried, for example, the father must sign the birth registration form within 60 days of the birth, or else his name is removed from the certificate. This may be difficult for a father who lives in a remote community, especially if the mother traveled outside the community to give birth.
18. A consequence of the discriminatory "second-generation cut-off" enacted in Bill C-31 means that brothers and sisters may have different abilities to pass on their status to their children. Mothers who are restored to Indian status by Bill C-31 will be grandmothers of children who cannot claim status, as well as those who can, depending on the marital arrangements of their parents.
 19. Furthermore, while First Nations membership increased as a result of the women and children regaining status under Bill C-31, the funding allocated to First Nations did not increase. As such, the implementation of Bill C-31 created new divisions between individuals and fostered discrimination within First Nations communities. First Nations budgets in housing, education, social assistance and infrastructure sectors have been severely stretched since 1985 due to the increase in members requiring services and supports. Many First Nations women are denied access to adequate services for themselves and their children due to the stress created on the available funding.
 20. Finally, since Bill C-31 was introduced there have been hundreds of cases before in the courts. These cases deal with membership issues, status issues and continued discrimination and sexual discrimination within Bill C-31.
 - 21. The federal government should make a commitment to address and resolve outstanding human rights issues for Aboriginal women through active engagement and consultation with Aboriginal women and their representative organizations. A Bill C-31 Secretariat should be created that will provide coordination, develop an effective communication network, conduct research and consultation, and provide legal and technical resources. First Nations should develop membership codes that are fair and equitable, regardless of gender and parentage. Aboriginal and non-Aboriginal governments and institutions should ensure that all future policy and legislation be carefully analyzed through a gender based analysis process within an Aboriginal context.**
 - 22. The provisions of the *Indian Act* must be changed to empower Aboriginal women to identify the eligibility of their children for status, and that children should not be disadvantaged due to unstated paternity. There must be greater provision of protections for women who have legitimate concerns that listing the father's name on the birth certificate would expose them to future harms. Education of Aboriginal parents about the implications of unstated paternity is required; as are changes to unnecessary and arbitrary**

administrative procedures that prevent the correct registration of births.

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

Jordan's Principle

24. Jordan's Principle, endorsed unanimously by the Canadian Parliament on December 12, 2007, calls on all federal, provincial and territorial institutions and departments to ensure that no child is denied necessary services because of jurisdictional disputes. The children's needs are met first and any jurisdictional issues resolved later.
25. Unfortunately, no implementation measures have yet been adopted at the federal, provincial or territorial levels. **Jordan's Principle should be formally implemented as a requirement in all federal, provincial and territorial policies pertaining to Aboriginal child welfare.**

Kelowna Accord

26. The federal government and all provincial and territorial governments supported the 2005 Kelowna Accord. The Accord was significant both because it provided a blueprint to help address the gap in standard of living between Aboriginal and non-Aboriginal people, but also because it demonstrated the ability of Aboriginal peoples and governments to collectively agree on a way forward. Since coming to power, the Conservative government has unilaterally decided that it will not honour the Accord. This is tantamount to taking regressive measures towards economic, social and cultural rights which violates Canada's obligations under the International Covenant on Economic, Social and Cultural Rights.
27. In June, Parliament adopted a private members bill that called on the government to respect the Kelowna Accord. Because private members bill cannot compel the government to spend money, the *Kelowna Accord Implementation Act* remains a largely symbolic victory.
28. **Adequate funding should be allocated to ensure full implementation of the Kelowna Accord.**

Endnotes

ⁱ NWAC's support for other joint submissions to the Universal Periodic Review of Canada is without prejudice to any actions or initiatives that NWAC may have taken in the past, or may take now or in the future in furthering the rights of Indigenous women and the overall mandate of NWAC.

ⁱⁱ Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 20 April 2006, p. 6, para. 23 notes the following:

“23. The Committee is concerned that Aboriginal women are far more likely to experience a violent death than other Canadian women. While noting the State party's numerous programmes aimed at addressing the issue, the Committee regrets the lack of precise and updated statistical data on violence against Aboriginal women, and notes with concern the reported failure of police forces to recognize and respond adequately to the specific threats faced by them (arts. 2, 3, 6, 7 and 26).

The State party should gather accurate statistical data throughout the country on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system. The State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations.”

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

ⁱⁱⁱ Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 20 April 2006, p. 6, para. 22 makes the following recommendation:

“22...The State party should repeal section 67 of the Canadian Human Rights Act without further delay. The State party should, in consultation with Aboriginal peoples, adopt measures ending discrimination actually suffered by Aboriginal women in matters of reserve membership and matrimonial property, and consider this issue as a high priority. The State party should also ensure equal funding of Aboriginal men and women associations.”

See also: Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada*, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (2006) at para.'s 17 and 45.

See also: Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, CERD/C/CAN/CO/18, 25 May 2007, para. 332.