

Alternative Report to the U.N. Committee on the Elimination of Racial Discrimination

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I. Coalition

The National Aboriginal Circle Against Family Violence (NACAFV) founded in 1999, is a non-governmental organization (NGO) with special consultative status with UN's ECOSOC since July 2015. The NACAFV is a national advocacy organization in support of shelters and advocates providing frontline services to Indigenous women and children who are victims of violence throughout Canada. The NACAFV has denounced the systemic discrimination to Indigenous peoples' victims of violence in Canada and advocates for equitable services for Indigenous peoples survivors of violence.

Quebec Native Women Inc. (QNW) founded in 1974, aims to defend the interests of Indigenous women, their families and their communities throughout the province of Quebec. QNW supports Aboriginal women in their efforts to better their living conditions through the promotion of nonviolence, justice, equal rights and health. QNW also supports women in their commitment to their communities. QNW is also an NGO with special consultative status with UN's ECOSOC.

Background

In the report of its 2012 review of Canada, this Committee expressed concern that despite “various measures taken by the State party to combat violence against Aboriginal women and girls... Aboriginal women and girls are disproportionately victims of life-threatening forms of violence, spousal homicides and disappearances.” The Committee went on to call on Canada to “strengthen its efforts to eliminate violence against Aboriginal women in all its forms” and to “consider adopting a national plan of action on Aboriginal gender-based violence.” The Committee further expressed concern “that the State party has not yet removed all discriminatory effects in matters relating to the *Indian Act* that affect First Nations women.”

This report documents **three critical areas** where Canada has failed to adequately address the concerns previously highlighted by this Committee, namely: **1) discriminatory underfunding of emergency shelters and related programmes for Indigenous women and children to flee violence; 2) the need to establish a comprehensive, coordinated national action plan commensurate with the scale and severity of violence against Indigenous women and children; and 3) the need to wholly eradicate discriminatory provisions in the *Indian Act*.**

II. Discriminatory Underfunding of Emergency Shelters and Related Programmes and Services to Indigenous Women in Canada

In most communities in Canada, social services are funded through the provincial or territorial governments. However, the Constitutional division of powers in Canada means that in First Nations reserves, these services are typically funded instead through the federal government.

Canada's report to this Committee highlights various examples of the federal government's financial commitments for programmes serving Indigenous families and communities. The budget figures are provided in abstract without comparison to allocations made by the provincial and territorial governments to benefit the general population within their respective jurisdictions. In fact, in many areas the federal government provides significantly less money per person for programmes and services in First Nations communities when compared to what the provincial and territorial governments spend in other communities. This is despite the fact that the lasting harms caused by colonialism and racism may mean that the needs of First Nations communities are significantly greater and that the costs of providing social services in small communities are often much higher, particularly if these communities are relatively isolated.

The federal government is the only source of funding for emergency shelters for First Nations women living on reserves. The federal government has reported that it currently funds 41 shelters to serve women and girls in First Nations communities. The NACAFV reports that currently there are in actual fact 38 operational women shelters in Canada funded by Indigenous and Northern Affairs Canada. Four of the 41 shelters currently cannot be accessed.¹ By the federal government's calculation, the 41 shelters are accessible to women and girls in 55% of the 617 First Nations communities across Canada, leaving women and girls in 45% of First Nations communities without access to dedicated shelter spaces.² In fact, the gap is likely much greater than acknowledged by the government, as federal funding is the only source of funding for emergency shelters for women in a total of 329 First Nations communities.

Not only are there not enough shelters, under-funding of existing shelters has a negative impact on the quality and accessibility of the services they offer. For example, when comparing two shelters in Labrador, both receiving funding from the Canadian government, the wage disparity is over 50%. In Sheshatshiu, Labrador on reserve, Nukum Munik Shelter support workers receive \$12.74 per hour. Nearby, in Happy Valley, Labrador off reserve, Libra House Emergency Shelter and Support for Women, the support workers receive \$28.00 per hour. This represents a huge disparity in funding that impacts Indigenous shelters in hiring and retaining qualified staff. It also negatively impacts Indigenous workers' standard of living.

Other systemic inequalities in funding and provision of services to First Nations have a direct impact on the accessibility and quality of care provided by shelters. For example, in Sheshatshiu, Labrador, the on reserve population is approximately 3000 people. The Nukum Munik Shelter and the Group Home for Children report that the water is unsafe to drink. The colour of the water is brown and it does not taste clean. The water must be boiled or other water must be purchased or accessed off reserve from an adjacent

¹ Two of the 4 are closed for long-standing renovations and upgrades and two others are no longer operational. See: Anita Olson Harper, *Needs Assessment for Indigenous and Northern Affairs*. National Aboriginal Circle on Family Violence, 30 April 2017.

² Indigenous and Northern Affairs Canada. "Family Violence Prevention Programme." Online posting updated 10 June 2016. <https://www.aadnc-aandc.gc.ca/eng/1100100035253/1100100035254>.

community by filling plastic bottles.

In addition, the roads to reach the shelter are unpaved, affecting ambulance transportation of patients to the hospital and general access to the shelter. Due to overcrowding and shortage of housing on reserve, the shelter in Sheshatshiu often houses homeless pregnant women, who otherwise would have no place to live.

The federal government currently provides no dedicated funding for Inuit and Métis communities who experience similar situations of discrimination. There are approximately 15 shelters and transition houses serving 53 Inuit communities across the Arctic. Some of these shelters are extremely small and most communities are only accessible by air. INAC does not provide funding to shelters in Inuit communities. Physical distance and the cost of flights in northern communities too often make these shelters inaccessible by air.

The absence of dedicated shelters in most Indigenous communities means that Indigenous women seeking to escape an abusive relationship may have to travel great distances, providing a disincentive to leave abusive relations and compounding the dangers when they do. While Indigenous women technically have equal access to shelters and other services compared to the general population in any nearby towns and cities, these shelters often do not have access to services tailored to the specific needs of Indigenous women and girls. The lack of culturally relevant programming and culturally safe places – and in some instances, insensitive and racist attitudes on the part of the staff and clients, can create significant barriers to Indigenous women and girls accessing these shelters and their services.

First Nations, Inuit and Métis women and children have greater access to shelters if they live in urban centres, but these shelters may not provide services and programs tailored to their specific needs. The gap in safety and support to achieve equality for Indigenous women and girls in need of shelter to escape violence remains despite the Prime Minister's promise in 2015 for a renewed Nation-to-Nation relationship.

In 2016, the Canadian Human Rights Tribunal concluded that the federal government had discriminated against First Nations children by systematically under-funding child and family services on First Nations reserves, both in comparison to the funding available in predominantly non-Indigenous communities and relative to the real needs of First Nations families.³ In particular, the Tribunal concluded that protections against discrimination in Canadian law mean that the government has an obligation to ensure “substantive equality” in the delivery of services to Indigenous and non-Indigenous people, regardless of what level of government funds those services. Substantive equality does not mean identical services. It means providing services that meet the particular needs of the communities being served.

³ Canadian Human Rights Tribunal. First Nations Child and Family Caring Society et al. 2016 CHRT 2. 26 January 2016.

The NACAFV strongly believes that the systematic underfunding of emergency shelters and other services for First Nations women and children is directly comparable to the case decided the Canadian Human Rights Tribunal and similarly reflects a form of racial discrimination.

While laws pertaining to marriage and division of property upon separation are generally covered by provincial and territorial laws, for First Nations people living on reserves, there is a separate family law regime. Under the 2013 *Family Homes on Reserves Matrimonial Interests or Rights Act*, each province is required to designate judges able to hear requests for Emergency Protection Orders to bar an alleged abuser from the family home. As of early 2017 only two provinces, New Brunswick and Prince Edward Island, had done so, meaning that First Nations women living on reserves in other provinces would be denied this critical legal protection.

Recommendation

We recommend that CERD calls upon the federal government to act immediately to eliminate all discrimination in funding for emergency shelters and related services for First Nations, Métis and Inuit women and children, including by significantly increasing the numbers of emergency shelters serving First Nations, Métis and Inuit communities.

We recommend that CERD urge all provinces to train and designate judges to be able to grant Emergency Protection Orders on behalf of women living on reserves.

III. A Comprehensive, Coordinated National Action Plan

There is a need for a comprehensive, coordinated national action plan commensurate with the scale and severity of violence against Indigenous women and girls. The extreme shortage of emergency shelters for First Nations women is one consequence of Canada's failure to take a comprehensive, coordinated approach to ensuring the safety of Indigenous women and girls. The UN Committee on the Elimination of Discrimination Against Women investigation into violence against Indigenous women and girls in Canada noted with concern the absence of a "strategic and integrated plan of action" and the fact that the various initiatives carried out by government remain "fragmentary" and "piecemeal".⁴

A current national Inquiry on Missing and Murdered Indigenous Women and Girls is scheduled to bring forward its recommendations for action in 2018. Unfortunately, the

⁴ Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 30 March 2015, CEDAW/C/OP.8/CAN/1, paras 110 and 172.

federal, provincial and territorial governments have very poor track records when it comes to acting on the well-known and well-established needs of Indigenous women and girls. The NACAFV endorses the findings of a group called the Legal Strategies Coalition which, in a review of past inquiries, studies and reports, that found little or no implementation of the overwhelming majority of more than 700 recommendations to stop violence against Indigenous women and girls.⁵ CEDAW similarly found that although “myriad evidence-based solutions” have been highlighted in past studies and reports, government response can be characterized as one of “inertia.”

Federal government officials have repeatedly stated that they will act on known needs of Indigenous women and girls without waiting for the results of the National Inquiry. However, there is no framework or clear plan of action to do so.

The NACAFV notes that the federal government has not made the domestic commitments that correspond to the UN General Assembly resolutions on violence against women actively championed by Canada on the international stage. In 2007, Canada played a lead role in the adoption of a General Assembly Resolution that called on all states to eliminate all forms of violence against women “by means of a more systematic, comprehensive, multi-sectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans...”⁶ The call for comprehensive, sustained National Action Plans has been reaffirmed in subsequent resolutions. Furthermore, the first recommendation of Indigenous Women’s Shelter Network at the Third World Conference of Women’s Shelters held in The Hague in November 2015 is a call for an International Strategy to Prevent Murdered and Missing Indigenous Women and Children Worldwide.

In June 2017, the federal government announced what it called a “National Strategy to Prevent and Address Gender-Based Violence.” The federal government has characterized this “national strategy” as building on current federal initiatives and coordinating existing federal programmes.⁷ As such, the strategy does not address critical gaps in supports and services, including the underfunding of First Nations women’s shelters described earlier in this submission. The major new initiative launched as part of this strategy is the creation of a new centre where government is charged with coordinating future initiatives. This could provide a foundation for the development of a true national action plan, but as it stands, the current strategy continues to fall far short of the standard established by the United Nations.

⁵ Legal Strategies Coalition, *Review of Reports and Recommendations on Violence against Indigenous women in Canada*, February 2015.

⁶ UN General Assembly, *Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly*, 30 January 2007, A/RES/61/143.

⁷ Status of Women Canada, <http://www.swc-cfc.gc.ca/violence/strategy-strategie/index-en.html>.

Recommendation

We recommend that CERD calls upon the federal government to commit to working with First Nations, Inuit and Métis women, their representative organizations and their Nations to develop a comprehensive and coordinated violence prevention strategy, beginning with implementation of the recommendations of CEDAW and other widely endorsed solutions currently before government.

IV. Discriminatory Provisions in the *Indian Act*

There is a need to wholly eradicate discriminatory provisions in the *Indian Act*. This federal Act has been amended twice in relation to the matter of gender discrimination, and the federal government is currently attempting to pass a third set of amendments, to address on-going discrimination against the descendants of women who in the past were arbitrarily denied Indian status and associated rights and benefits because they had married a man without status. Unfortunately, even the latest amendments will not wholly undo the harm, leaving thousands of people unable to acquire or pass status onto their descendants strictly as a consequence of the original act of discrimination that took status away from Indigenous women.

Under the *Indian Act*, the federal government maintains a registry of women, men and children who the government recognizes to be First Nations. This is known as “Indian status.” Indian status is associated with a range of important rights and benefits. Except for a relatively small number of First Nations that have adopted membership provisions significantly different from those set out under the *Indian Act*, status is needed to vote in the band elections and will affect rights to live within one’s reserve. First Nations status is also necessary to access a variety of health benefits provided through the First Nations and Inuit Health Branch of the federal Department of Health. These benefits are known as “Non-Insured Health Benefits,” because they are intended to cover areas not included in other provincial and territorial health plans. These include dental care, vision care, and coverage of prescription drugs and medical equipment.

Until 1985, under the *Indian Act*, the federal government took Indian status away, including the right to own and inherit land on reserve, from any status First Nations woman who married a non-status man. The *Indian Act* also made the status of children dependent exclusively on the status of the father. First Nations women had a long struggle to change these inequitable provisions, including taking the issue to the United Nations. After the UN Human Rights Committee found that these provisions were discriminatory, the federal government amended the *Indian Act* in 1985. This amendment, known as Bill C-31, ended the practice of removing status for “marrying out,” allowing either parent to pass on status, and enabled tens of thousands of women and their descendants to regain status.

Critically however, Bill C-31 created new forms of discrimination. Bill C-31 introduced what is known as the “second generation cut off.” What this means is a person cannot have status based on a single grandparent with status. A person *can* have status if only one parent has status. However, they in turn can only pass on status if they have a child with someone else who also has status. Under Bill C-31, the second generation cut off rule was applied retroactively to the children of women whose status had been taken away for marrying out. This had the effect of dramatically limiting the number of people eligible to have their status restored.

This was partially corrected in new amendments to the *Indian Act* in 2011, known as Bill C-3, after a successful legal challenge brought by First Nations lawyer Sharon McIvor. The amendments restored access to status to a specific set of those excluded by the retroactive application of the second generation cut off rule for descendants of women who had married out, but again did so on a discriminatory basis.

Through the amendment, the grandchildren of women who had lost status are eligible for status, but only if they or one or more of their siblings was born since 1951. Furthermore, they cannot pass on status on to their own children born before 1985 unless the other parent has status; a restriction that does not apply to parents whose status lineage had never been interrupted by the marrying out provisions. This creates two classes of status, set out under section 6(1) and 6(2).

On August 3, 2015, the Superior Court of Quebec announced its decision in the *Descheneaux v. Canada (Attorney General)* case. The court found that these new provisions violate equality rights under the *Canadian Charter of Rights and Freedoms*.⁸ The federal government has, in response, introduced Bill S-3, that eliminates the inequalities in the ability to pass on status, but still limits the point at which status can be restored to families where one or more sibling was born after 1951. Passage of the Bill has been delayed after it was rejected in the Canadian Senate by Senators, on the basis that the legislation should eliminate the distinctions between all descendants of women who married out and those whose status was never affected by this discrimination.

Recommendation

We recommend that CERD calls upon the government of Canada to make a clear commitment to eliminating all provisions in the *Indian Act* that perpetuate the historic act of discrimination of arbitrarily taking status and property rights away from First Nations women who married out and denying status to the their descendants. This should include equitable access to restitution for loss of land, houses and related benefits.

⁸ *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982.

VI. Summary of the Proposed Recommendations by the National Aboriginal Circle Against Family Violence and Quebec Native Women Inc.

Recommendation on Discriminatory Underfunding of Emergency Shelters and Related Programmes and Services for Indigenous Women and Children

We recommend that CERD calls upon the federal government to act immediately to eliminate all discrimination in funding for emergency shelters and related services for Indigenous women and children, including by significantly increasing the numbers of emergency shelters serving Indigenous communities.

We recommend that CERD urge all provinces to train and designate judges to be able to grant Emergency Protection Orders on behalf of women living on reserves in Canada.

Recommendation on a Comprehensive, Coordinated National Action Plan

We recommend that CERD calls upon the federal government to commit to working with Indigenous women, representative organizations and their Nations to develop a comprehensive and coordinated violence prevention strategy, beginning with implementation of the recommendations of CEDAW and other widely endorsed solutions currently before government.

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