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THE ASSIMILATION OF THE INDIGENOUS PEOPLES IN UPPER NORTH AMERICA THROUGH CANADIAN LEGISLATION ON THE DEFINITION OF INDIAN STATUS AND BAND MEMBERSHIP

SUBMISSION TO THE:

WORKING GROUP ON INDIGENOUS POPULATIONS

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I. CANADIAN POLICY

The Final Report of The Study Of The Problem Of Discrimination Against Indigenous Populations, Chapter IX (E/CN. 4/Sub. 2/1983/Add. 1 Page 31) classified Canada as among those countries which ".....lay emphasis on voluntary integration over time, with due regard for the cultural values and traditions of the indigenous peoples...". This classification based on information provided by Canada is incorrect. A correct description of Canada's indigenous policy is not integration but assimilation, defined in the Special Study of Racial Discrimination in the Political, Economic, Social and Cultural Spheres, (U.N. No. 71. XIV. 2) paragraph 370. as:

> "....firmly based on the idea of the superiority of the dominant culture, and aims at producing a homogenous society by getting indigenous groups to discard their culture in favor of that of the dominant group. It spells the total absorption of persons and groups into the dominant culture as the established pattern into which the others are to fit._

Canada's assimilation policy and goal of assimilating the indigenous Indian nations is clearly evidenced by its most recent constitutional and legislative initiatives, particularly Bill C-45, An Act To Amend the Indian Act. This established assimilation policy now consists of unilaterally enacted Canadian legislation, known as the Indian Act, to control the definition and registration of indigenous peoples and otherwise regulate almost all aspects of Indian life on reservations and reserves.

Centralized control of Indian status and membership, the imposition of alien forms of governance on Indian nations and the control of Indian property and lands on reserves are key features of the assimilation program. Status Indians are those indigenous peoples who are recognized for the purposes of assimilation. A 'band' as defined in the Indian Act is an artificial administrative body superimposed on indigenous peoples traditional authorities as a means of regulation and control. Centralized control of the definition of indigenous peoples and tribal organizations affected the Amerindian population more than it did the mixed-blood Metis or the Eskimo or Inuit population. The Metis have been historically regarded as Canadians who were genetically part Indian, not possessing group or collective political

or property rights. The Eskimo or Inuit peoples were until quite recently isolated from Southern Canada. At present, Canada has approximately 350,000 indigenous peoples defined as status Indians targeted for assimilation.

The 'enfranchisement' sections in the Indian Act provide for the systematic dispersal of tribal territory, the breaking up of traditional Indian territories and reservations into individual title under Canadian Law. This enfranchisement system has been rejected by the Indian peoples although a small number of people chose to surrender their tribal rights in order to vote and to move out from the various disabilities attendant with 'status'.

II. CANADA'S INDIAN ACT

The Indian Act was imposed on the Indian Peoples. The Indian Nations did not voluntarily submit to Canada's jurisdiction or institutions. For the most part, the Indian nations entered into treaties to preserve their sovereignty and self-governing institutions. In regions where no treaties have been signed, the Indian nations have the inherent authority to determine and define their own member-citizens. The removal over time of the authority of the Indian nations to decide on member-citizenship questions was accomplished through the Indian Act.

The first Indian legislation of the Canadian government was enacted in 1868, and included the following definition of status:

> For the purposes of determining what persons are entitled to hold, use or enjoy the lands and other immoveable property belonging to our appropriated to the use of the various tribes, bands or bodies of Indians in Canada, the following persons and classes of persons, and none other, shall be considered as Indians belonging to the tribe, band or body of Indians interested in any such lands or immoveable property:
>
> FIRSTLY: all persons of Indian blood, reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and their descendents.
>
> SECONDLY: all persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians, or an Indian reputed to belong to the

particular tribe, band or body of Indians interested in such persons; and

THIRDLY: all women lawfully married to any of the persons included in the several classes hereinbefore designated: the children issue of such marriages and their descendents.

The 1868 definition provided that only federally recognized status Indians could reside on reserves, however the definition was so broad that most indigenous Amerindian people would be covered. Nevertheless, the Federal Government had taken control over residency on tribal territories and reserves, albeit in an indirect manner.

The initial definition of status was modified in 1869, to provide that an Indian woman who married a non-Indian would lose her right to use tribal territory. Subsequent legislation on Indians and Indian lands elaborated on the sexual discrimination principle and it now permeates the entire status registration system.

III. BILL C-45, AN ACT TO AMEND THE INDIAN ACT

Bill C-45 attempts to remove all aspects of sexual discrimination from the existing Indian Act, and provide for the "reinstatment" of persons and descendents of persons who lost status as a result of the Act. Two distinct issues are raised, both of which will have profound effects of Indian communities. The question of re-instatement of over 100,000 people is dependent on the resolution of the question of who has final determination of member-citizenship. Canada has argued that:

(a) changes are needed to bring the existing Indian Act in line with the Lovelace decision of the U.N. Human Rights Committee, and

(b) changes are needed to bring the Act in line with the Canadian Charter of Rights and Freedoms.

(i) The U.N. Human Rights Committee:

The question of Indian status in Canada was canvassed by the Human Rights Committee in the Lovelace case. The Committee found that the denial of the right of Mrs. Lovelace to enjoy her culture by the Indian Act R.S.C. 1976 constituted a violation of minority rights under Article 27 of the International Covenant on Civil and Political Rights. (G/50 215/51 CANA 18) The Coalition of First Nations rejects the minority rights framework within which this case

was decided because the Indian Nations are 'peoples' - subjects of International Law possessing a right to self-determination, not minorities who are objects of International Law as it may by executed 'by the state' to which they belong. The limitation on the Committee's jurisdiction under the CCPR Optional Protocol to individual and not group communications has prevented the Committee from adequately considering the question of Indian self-determination and the co-committment right of such peoples to define their own membership. Lovelace is therefore to be considered an inadequate examination of the membership/status issue in Canada. In view of the imminence of a succession to Bill C-45, the Coalition of First Nations urges the Working Group to recommend that the Human Rights Committee review of Canadian Government position on the definition issue, in full consideration of the existence of the right of the Indian Nations to self-determination and Canada's reports under the CCPR, Article 16 and 17, and convey "general comments" on this issue as it considers appropriate.

(ii) The Charter of Rights and Freedoms:

The Indian Nations have not agreed to the Canadian constitution or its Charter of Rights and Freedoms, although there are discussions occuring an acceptable definition of aboriginal rights to be included in Canada's Constitution. Prior to any general agreement on aboriginal rights, the Prime Minister of Canada announced this March, at the First Ministers meeting that the Government of Canada would be imposing its Charter of Rights on Indians by introducing legislation to amend the Indian Act. This arbitrary initiative serves to illustrate the "bad faith" present in so-called constitutional negotiations. Proposed amendments to the Indian Act to remove sexual and gender discrimination are now perceived as a 'womans rights' issue and not an 'Indian rights' matter. As such, the amendments are broadly supported by Canadians because these are seen as simply the removal of discrimination, not the elaboration of an assimilationist program. Bill C-45 continues the process of assimilating Indian people by controlling their definition and registration, but attempts to make it appear that it is not to be accomplished in a manner that discriminates on the basis of sex. Indian persons, in other words, are to be equally assimilated regardless of sex. Federal policy as set out in Bill C-45 is diametrically opposed

to the struggle of the Indian Nations for self-determination, which includes the authority to set and enforce standards for member-citizenship! Contrary to Canadian assimilation policy, the indigenous peoples south of 60° have not been politically, culturally, racially or linguistically absorbed into the mainstream in the 100 years since the first Indian Act was created. At present, the Indian Nations are exercising their self-determination, including the defining of their own member-citizenship because they are determined to remove the colonial structure that is the Indian Act and alien domination from their affairs. For the information of the Working Group, we provide as Appendix I our "General Policy Considerations Concerning Membership".

GENERAL POLICY CONSIDERATIONS

CONCERNING MEMBERSHIP

Constitutional Authority	1. Each First Nation has the inherent right and authority to determine and define their own member citizenship including residency;
Applicable Law	2. Applicable law shall be the traditional and customary laws of the Cree Nation pertaining to member citizen and the residency thereof, including the renunciation and loss of membership;
Rules and Regulations	3. Each First Nation shall develop rules, regulations and mechanisms for the administration of member citizenship and residency including central registry, births, deaths, membership applications, and/or renouncements;
Appeals	4. Each First Nation shall develop in accordance with their respective laws and regulations mechanisms and procedures for any and all appeals emanating from either the fundamental laws, rules and regulations or the administration of same where bona fide alleged violations or case or controversy shall arise;
Standards of Review	5. Standards relative to either fundamental legislation, rules and/or regulations including the adjudication of any alleged grievance of said laws, rules and regulations and the administration of same, shall be the standards of fundamental fairness and natural justice as prescribed by the normative rules of jus naturale;
Public Notice	6. All laws, rules and/or regulations shall be made public and any mechanisms concerning appeals and their procedures shall be available to all persons who are member citizens of a First Nation or to those who have a legitimate claim for the attainment of member citizen and/or to those who have been denied and/or lost member citizen status.

TREATY SIX CHIEFS ALLIANCE
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