



JOINT INTERVENTION

Concern Women Action for Peace-Sudan, Indigenous Educator's Caucus, Mother of Red Nations, Quebec Native Women, Pauktuutit Inuit Women's Association

**Statement by the Native Women's Association of Canada
The Third Session of the Permanent Forum
Human Rights – May 14, 2004**

CHECK AGAINST DELIVERY

Chairperson, members of the Permanent Forum, panellists, Indigenous sisters and brothers, my name is Kukdookaa Terri Brown, and I have the honour of addressing the Permanent Forum as the President of the Native Women's Association of Canada. The Native Women's Association of Canada (NWAC) is founded on the collective goal to enhance, promote, and foster the social, economic, cultural and political well-being of First Nations and Métis women within First Nations and Canadian societies.

The Native Women's Association of Canada is highly encouraged by the commitment of the Permanent Forum to addressing the human rights of Indigenous women. We hope that this is a beginning of a trend towards the integration of the Indigenous women's perspective in the future work of this Forum.

We have not heard yet about the discrimination and marginalization that our disabled and lesbian sisters face and the Native Women's Association of Canada would like to take this opportunity to add those voices of women living with disabilities and lesbian women into the proceedings of this Third Permanent Forum.

Sisters and brothers, our sisters are not only experiencing structural and intersectional marginalization manifested in the lack of culturally based programs and services, the lack of representation within the Canadian labour force, etc they are also discriminated against from within our own communities, the residual legacy of imposed Christian ideology on Indigenous thinking and world views.

Chairperson, we urge the Permanent Forum not to forget our sisters and brothers and further recommend that more be undertaken to ensure the inclusion of those who are often the most marginalized of the most marginalized.

Today, I would like to speak to three critical areas in which the human rights of Indigenous women are violated in Canada:

1. Matrimonial property rights
2. Status rights and
3. The right to live free from violence.

Although I will speak specifically about the situation of Indigenous women in Canada, we share these realities with many other Indigenous women across the world.

Matrimonial Property Rights

In Canada, provincial and territorial laws governing matrimonial property were reformed over 25 years ago to provide special protection to women, including an equitable dispossession of matrimonial property upon dissolution of a marriage between spouses and the right to exclusive possession of the matrimonial home upon separation for a period of time, particularly in cases involving violence against women.

First Nations women living on-reserve in Canada do not enjoy the protection of these laws designed to protect women's matrimonial real property rights upon marital breakdown. This is a clear violation of the equality rights guaranteed under section 15 of the *Charter* in Canada. This is based on the Supreme Court of Canada's interpretation of the application of the constitutional principle of paramountcy, which renders federal laws (i.e. the *Indian Act* in this case) paramount to provincial or territorial laws that cover the same subject matter. In this case, the Supreme Court of Canada, in *Derrickson v. Derrickson*,¹ has interpreted the land management provisions of the *Indian Act*, which do not include references to matrimonial property rights, are paramount to the provincial and territorial laws that specifically address matrimonial property.

The socio-economic realities of First Nations women's lives in Canada, particularly on-reserve, where housing shortages, poverty and violence against Indigenous women are widespread problems, make the protection of their matrimonial property rights that much more critical. This violation of human rights cannot continue. It contravenes national and international human rights obligations by which Canada is bound and results in grave injustices for First Nations women in Canada.

In the past, First Nations leadership has been resistant to implementing legislative reforms on the basis that to amend the *Indian Act* interferes with self-government. This resistance has been overtly at the cost of the individual rights of First Nations women. We are pleased with the recent support by national Indigenous organizations that recognize individual rights as valuable of protection, along with self-government rights.

The Native Women's Association of Canada recommends that interim legislation be put into place that guarantees First Nations women will have matrimonial property rights equivalent to all other women in Canada, with a date set for the legislative scheme to be replaced with self-governing legislation that will both protect women's matrimonial rights and respect the autonomy of First Nations communities. This is a viable solution within the community. The Native Women's Association of Canada calls upon the Canadian state to work toward instituting these measures immediately.

¹ *Derrickson v. Derrickson*, [1986] 2 C.N.L.R. 45 (S.C.C.).

Status Issues

In Canada, the colonial legislation, amendments under the *Indian Act*, “Bill C-31 amendments” were made to remedy overt sex discrimination against Indigenous women in 1985. These amendments remedied the provisions of the former *Indian Act*, which disenfranchised Indian people for a number of illegitimate reasons, such as becoming a doctor or a lawyer. For Indigenous women, they and their children were disenfranchised, or lost their status as “Indians”, for marrying a man without status. These provisions were enacted to make the *Indian Act* consistent with the newly enacted *Charter*, which contained a strong equality provision (section 15).

The reality is that these amendments did not bring an end to discrimination against Indian women under the *Indian Act*. Rather, residual discrimination remains in the operation of the current provisions relating to Indian status - sub-sections 6(1) and 6(2) that introduced a whole new regimes for determining status. The effect of these sections is to create a two-tiered entitlement scheme in which status does not automatically flow to status Indian descendants, but is dependent, in part, on pre-existing status at the time of the Bill C-31 amendments and subsequent in-marriage of descendants to status Indians. Given that pre-existing status is a factor in determining descendant status, residual sex discrimination remains for Indigenous women. The impact of this discrimination includes denial of access to federal programs such as non-insured health services and post-secondary education services. It is also a matter of identity, since to be stripped of “status” has an impact on one’s sense of belonging within a community.

The Native Women’s Association of Canada calls upon the Canadian government to make amendments to this legislative scheme that will end the human rights violations towards First Nations women and their descendants. An alternative scheme must take into consideration the self-government needs and aspirations of First Nations peoples in Canada and should again, be considered to be an interim measure, to be replaced with self-government legislation over time that is also respectful of the human rights of First Nations women.

Violence Against Women

Violence against women and girls is recognized as a global human rights problem, having a particularly devastating impact on the lives of Indigenous women and girls throughout the world.² Unfortunately, Canadian Indigenous women and girls are not exempt from this international reality and suffer from all the social, economic, cultural, political and civil problems that breed violence: structural inequalities, gendered racism/racialized sexism, poverty, lack of adequate access to matrimonial property rights, justice,

² Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Towards an effective implementation of international norms to end violence against women*, E/CN.4/2004/66 at page 11.

educational, employment and political participation and low levels of sexual and reproductive health and correspondingly high rates of HIV/AIDS and other sexually transmitted infections (STIs). As a result of racialized violence, rape, pornography and media/internet violence is targeted at Indigenous women. High rates of all forms of violence, particularly racialized violence, experienced by Indigenous women have negative impacts on children and youth, which have the effect of perpetuating the cycle of violence, through their involvement in gangs and street exploitation, for example. The extreme violence leading to unacceptably high levels of missing and murdered Indigenous women destroys the lives not only of the Indigenous women themselves but those of their children and families, who are left without mothers, aunts, sisters and partners.

The Native Women's Association of Canada has recently launched the Sisters in Spirit Campaign, which aims to increase public awareness and education levels about the alarmingly high rates of violence against Indigenous women that all too often lead to their disappearance and death. This human rights violation calls for urgent action on the part of States and Indigenous organizations. We agree with Special Rapporteur Yakin Ertürk, who states in the Report of the Special Rapporteur on violence against women, its causes and consequences, 2004, who states:

62. State accountability is embedded in the standard of due diligence to protect women's bodily integrity: to prevent, investigate and punish private or State violence against women in accordance with human rights law. In so doing, the State and its agents must undertake gender analysis in order to accurately assess how, why, and under what circumstances specific forms of violence are perpetrated.³

In the case of Indigenous women, a gendered race analysis is required to fully assess the problem and solutions to the extreme violence leading to death and disappearances of our mothers, aunts, daughters and sisters. The violence must not be allowed to continue.

Conclusion

Sadly, the three examples provided above are just a few examples of the serious human rights violations against Indigenous women in Canada that have experienced for far too long. Our leadership must call out for reforms in these areas. States must be held accountable for acting contrary to the very human rights principle they espouse to hold in international fora such as this one.

The Native Women's Association of Canada requests the following from the Permanent Forum:

³ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Towards an effective implementation of international norms to end violence against women*, E/CN.4/2004/66 at para. 62.

1. Support the preparation of a comprehensive review for the Beijing+10 process, of how the Beijing Platform for Action and its five-year review have, or have not been implemented to improve the lives of and fulfil the human rights of Indigenous women around the world. This report should be prepared with significant consultation of interested national, regional and international Indigenous Women's organizations. It should outline the specific human rights violations of Indigenous women and recommend solutions that can be implemented to remedy these violations.
2. Through its influence and via the workings of its member states, commit to ensuring that Indigenous women have the necessary funding required to participate during the Beijing+10 process, including as members of official Government delegations.
3. To implement the recommendation of the Permanent Forum's Report from their Second Session (May 12-23 2003) Paragraph 25 on the impact of armed conflicts on Aboriginal children.
4. Ensure the mainstreaming of gender throughout the Permanent Forum. Specific attention must be given to the full spectrum of human rights issues of Indigenous Women around the world. The right to live free from violence is a key human right that needs to be protected and promoted by States. We note with approval the decision of the Economic and Social Council in 2001 to endorse the decision of the UN Commission on Human Rights to appoint a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and to specifically request that the Rapporteur "take into account a gender perspective while carrying out her/his mandate, paying special attention to discrimination against indigenous women." We also welcome the decision of the Inter-Agency Network on Women and Gender Equality to create a new task force on Indigenous women and urge the Network to ensure that Indigenous women are fully consulted in this process.

Thank you for listening.