

Statement by Celeste McKay, submitted on behalf of the by Native Women's Association of Canada to the Expert Mechanism on the Rights of Indigenous Peoples, 3rd Session, July 12th to 16th, 2010, Human Rights Council, United Nations, Geneva

Item 4. The United Nations *Declaration on the Rights of Indigenous Peoples*

Presenter: Celeste McKay

We, along with the other National Aboriginal Organizations in Canada, have stated to Canada that we are encouraged by its decision to endorse the UN *Declaration on the Rights of Indigenous Peoples*. Yesterday, Canada stated that they were seeking the "best way forward" in endorsing the UN *Declaration*. The best way forward is for Canada to immediately endorse the UN *Declaration* without qualification.

Secondly, the UN *Declaration* must be used as the minimum standard in the OAS Working Group on the Draft American Declaration on the Rights of Indigenous Peoples.

We would like to take this opportunity to highlight five (5) key articles of the UN *Declaration* which relate to the human rights challenges in Canada. These are relevant to similar challenges in other regions of the world. Article 2 provides for non-discrimination of all Indigenous peoples and individuals in the exercise of their rights, particularly in relation to their indigenous origin or identity. Article 3 provides for the right to self-determination. Article 9 provides that "Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned" without discrimination. Article 19 requires that states shall consult and cooperate with Indigenous peoples in good faith "in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." Article 22 provides for special measures to ensure Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

These articles and the particular rights they articulate are relevant to the ways in which States must implement legislative measures. In Canada, for example, our Parliament is currently implementing legislative measures in relation to Matrimonial Real Property (Bill S-4: Family Homes on Reserves and Matrimonial Interests or Rights Act) and in relation to citizenship rights defined under the *Indian Act* (Bill C-3: Gender Equity in Indian Registration Act).

In relation to the Matrimonial Real Property legislation, we call on Canada to ensure that the right to self-determination, the right to non-discrimination, and the right to live free from violence and free, prior and informed consent are protected and promoted. In the context of this legislation, the Native Women's Association of Canada has identified that the current bill falls short of these standards. It does not recognize the inherent jurisdiction of First Nations governments based on principles of international law as well as section 35 of the Canadian *Constitution*. Instead, the proposed legislation is based on a

delegated law-making authority model without recognition of these national and international legal standards and rights. We call for the government of Canada to ensure this concern is addressed prior to adopting this legislation. We fully support legislation in this area that will protect Indigenous women who experience violence and discrimination. This legislation must be modified to achieve this and must meet international standards and norms as discussed above.

Our second example relates to legislation that is currently before our Parliament to address Indigenous citizenship rights aimed at remedying existing discriminatory provisions of the *Indian Act*. We refer back to the rights to non-discrimination especially in relation to Indigenous identity and origin, self-determination, and free, prior and informed consent contained in the *UN Declaration*. In the proposed legislation, the right to non-discrimination is not adequately promoted as there is the potential for continued residual discrimination facing First Nations women based on arbitrary rules contained in the *Indian Act*. Further, discriminatory provisions facing descendants of Indigenous women who do not name the paternity of their children are not ameliorated by the current Bill. In order to ensure that the free, prior and informed consent of Indigenous peoples in Canada is obtained, the Native Women's Association of Canada urges the Government to commit to a full and transparent process to explore the complex and broader issues related to citizenship that are raised in this Bill.

We hope that these examples of how the *UN Declaration* can be applied to legislative measures in Canada make a positive contribution to our discussion on the implementation of the *UN Declaration*.

Thank you, Mr. Chair.