



September, 2012

## **Human Rights Council Agenda Item 3 Protection of all human rights**

**Written Statement by Sonja Grosse Broemer, submitted by the International Human Rights Association of American Minorities (IHRAAM), an international NGO in Consultative Status (Roster)**

### **“Canada’s Treatment of Native Children Shoddy and Suspect”**

**Canada’s repeated and ill-conceived reply to allegations regarding the unequal treatment of native foster children is that they are acting “in the best interest of the child”. It argues this claim on the fact that it has ratified and passed domestic legislation partly implementing the Convention on the Rights of the Child and that it has laws and regulations in place with a view to guiding the judicial and child care system to assure the protection of children.**

**However, Canada made similar claims during the residential school era, the horrific truth of which slowly surfaced and only now is reluctantly acknowledged. Canada used this claim again during the “60’s-scoop”, when thousands of native children were taken from their natural parents to unknown destinations all over North America, often for financial gain. Canada’s assumption of jurisdiction over natives, its treatment of natives as inferior and incapable, its destruction of traditional leadership structures and denial of access to both traditional and non-traditional economic activity for over more than a century, has wreaked havoc on native peoples. Canada still uses the “best interests” argument today despite the fact that three times more native children are currently in the care of the system than during the peak of the residential school era. Despite widespread awareness that separating children from their natural parents has far-reaching negative consequences, it remains the first option when problematic situations crop up within native families.**

**Today conditions for natives on and off reserves resemble conditions in developing countries, with children impacted accordingly:**

- Canada ranks third out of 177 countries on the Human Development Index (HDI), while native communities rank 68 on the same index**
- One in four native children on reserve lives in poverty compared to one in nine non-native children**
- The number of suicides among native children between the ages of 10-19 is 2.1 times higher than among their non-native counterparts**
- 57% of native children in metropolitan areas are living in low-income families compared to 21% of non-native children**
- 44% of native children off reserve and 35% of native children on reserve suffer from chronic health conditions**

- the majority of native children are apprehended due to poverty, poor housing conditions and substance abuse of the caregivers, the number one reason for non-native children being apprehended is exposure to domestic violence
- two times as many native children are apprehended during investigation, while non-native children benefit from preventive family support during this stage

There are good reasons to question the adequacy of Canada's response to the needs of native children:

- Federal funding is 22% less for native children
- Federal funding is principally received for apprehended children, leaving insufficient funds for preventive actions – as required by BC laws as priority options – or family reunification support
- Only 2.5% of native children in BC are placed within native foster homes
- the funding formula is outdated and has not been adjusted to inflation rate since the 1990s
- There is no system to review foster homes. A study among inmates showed that 50% of native children were abused while in foster care, 40% stating the care received while in foster homes was worse than the treatment they had received in their own home. None of their non-native counterparts reported a worse treatment within foster care than in their birth-homes.

In April 2012, the Canadian government announced its intent to appeal a federal court decision forcing review of a Canadian Human Rights Tribunal assent to Canada's argument that the lower funding provided to child protection services for native children by the federal government compared to the funding provided to non-native children by the provincial government is not discriminatory insofar as the services were provided by two different funders, could not be compared and were therefore not discriminatory. Why is the Canadian government willing to fly in the face of such evident unfairness?

Underfunding schools and social services on reserve, and denying preventive measures to help native families to stay together forces native people off reserve. Consider:

- The Indian Act system of native governance imposed by Canada is so limited in compensating office holders that it forces chiefs and council members to seek employment and even housing off reserve, impacting their ability to address community needs.
- A severe lack of housing on reserve forces natives to leave, and makes it impossible for displaced community members to move back. Funding for new housing is usually only provided to communities that are financially stable, which are rare, and is primarily used for repairs.
- Apprehension of children often results in the eviction of the parents from band housing due to the concomitant reduction in their welfare payments. Parents can no longer afford the housing nor justify having it on the previous scale, as there are long lists of people needing or wanting houses on reserve. These evictions often result in parents moving in with extended family, leading to even more overcrowded conditions, or leaving the Reserve seeking a better life in the city, and often ending up in a homeless shelter instead. Due to the remoteness of some reserves this makes it impossible for parents to exercise the little visitation rights they have.
- The resultant homelessness or inadequate housing is regarded as a further indication of parental incapacity to provide, and then used to justify withholding return of their children

Canada's ongoing policies with regard to native children result at best from short-term, short-sighted under-spending. But they may also function as part of a strategy to strengthen Canadian claims to native lands and resources by weakening the visible bases for native sovereignty. The desperate situation of native peoples in Canada who have left the Reserves and now figure disproportionately in criminal activity, ill-health and poverty leads to this further question: once dispossessed, does native assimilation on any normative equal status basis actually take place, or is Canada en route to forming its own native-dominated underclass?

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The Convention was ratified in 1991 but still in reality has not been fully implemented, one problem being that Canada uses federalism as a reason or excuse for inequities: the Convention has to be implemented by the federal government but child regulations are mainly provincial responsibility. Provinces on the other hand see the Convention as federal business. Therefore responsibility is bandied back and forth, the same as with the native population, albeit the problems in the latter regard are even more significant.

<http://www.marylongman.com/images/SIXTIESscoop-2004.doc.pdf>; <http://www.ajic.mb.ca/volumel/chapter14.html#6>; <http://firstnationsdrum.com/2009/03/the-sixties-scoop-how-canada%E2%80%99s-%E2%80%9Cbest-intentions%E2%80%9D-proved-catastrophic/>

For First Nation: Assembly of First Nations. 'The First Nations plan for creating opportunity', Nov. 2006 [www.turtleisland.org/news/fnplan.html](http://www.turtleisland.org/news/fnplan.html); For Canada: 'Human development report 2007/2008'. [hdr.undp.org/en/reports/global/hdr2007-2008](http://hdr.undp.org/en/reports/global/hdr2007-2008).

'2008 report card on child and family poverty in Canada', Campaign 2000.

Assembly of First Nations. 'The First Nations plan for creating opportunity', Nov. 2006 [www.turtleisland.org/news/fnplan.html](http://www.turtleisland.org/news/fnplan.html)

'Aboriginal Children's Survey, 2006: Family, Community and Child Care', Statistics Canada, Oct. 2008, Catalogue no. 89-634-X-No.001.

Guèvremont, Anne, and Kohen, Dafna, 'Inuit children's health: A report using the 2001 Aboriginal Peoples Survey (Children and Youth Component)', Statistics Canada, Ottawa, Sept. 2007, [www.statcan.gc.ca/pub/89-627-x/89-627-x2007003-eng.htm](http://www.statcan.gc.ca/pub/89-627-x/89-627-x2007003-eng.htm).

<http://www.fncaringsociety.com/sites/default/files/docs/WendeReport.pdf>

<http://www.fncaringsociety.com/sites/default/files/docs/Mesnmimk-Wasatek-v5.pdf>

First Nations Child and Family Service Program – Indian and Northern Affairs Canada of the May 2008 Report of the Auditor General, Report of the Standing Committee on Public Accounts, March 2009, [www.fncfcs.ca/docs/402\\_RACP\\_Rpt07-e.pdf](http://www.fncfcs.ca/docs/402_RACP_Rpt07-e.pdf).

A variety of studies show that preventive measures and family support are beneficial to child development and are economically efficient. Most former foster children are less capable of forming healthy relationships with others, less likely to finish high school, more likely to lead dependent lives and break the law. As a result, native children are not only over-represented in the child care system, native youth and adults continue to be over-represented in prisons. See [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200805\\_04\\_e\\_30700.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200805_04_e_30700.html); 2008 May Report of the Auditor General of Canada.

According to the correctional services Canada by March 2009 17.3% of federally sentenced offenders were native despite of only making up 2.7 % of the adult population. (21% of admissions to provincial/territorial sentenced custody). Indigenous adults were on average three years younger than non-native adults, with a greater proportion of Indigenous people between the ages of 20 and 29 compared to non-Indigenous people. (Integrated Correctional Services Survey, <http://www.statcan.gc.ca/daily-quotidien/060606/dq060606b-eng.htm> June 2006) Two thirds of native inmates reported to have not been raised by their birth-parents. Only one third of non-natives have had contact with the child welfare system. (Trevathan, S., Auger, S., Moore, J. P., MacDonald, M., & Sinclair, J. (2001).

[http://www.nationalchildrensalliance.com/nca/pubs/2003/Children\\_in\\_Care\\_March\\_2003.pdf](http://www.nationalchildrensalliance.com/nca/pubs/2003/Children_in_Care_March_2003.pdf)

A.C. Hamilton, A Feather not a Gavel: Working toward Aboriginal Justice p. 144-147.

Canada (Human Rights Commission) v. Canada (Attorney General), 2012 FC 445 (CanLII), <http://canlii.ca/t/fr018>. See also "First Nations Child and Family Caring Society of Canada to appeal Canadian Human Rights Tribunal Decision to dismiss discrimination claim for First Nations Children on a legal loophole", <http://www.newswire.ca/en/story/737407/first-nations-child-and-family-caring-society-of-canada-to-appeal-canadian-human-rights-tribunal-decision-to-dismiss-discrimination-claim-for-first-na>

Integrated Correctional Services Survey,

<http://www.statcan.gc.ca/daily-quotidien/060606/dq060606b-eng.htm> June 2006;

<http://www.statcan.gc.ca/daily-quotidien/060606/dq060606b-eng.htm>; Especially

native women are more likely to be victims of crime than any other group of people in Canada,

<http://www.statcan.gc.ca/daily-quotidien/110517/dq110517b-eng.htm>;

<http://www.statcan.gc.ca/daily-quotidien/100623/dq100623c-eng.htm>.