SUBMISSION TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS REGARDING THE 5TH PERIODIC REPORT OF CANADA

Submitted by:
The Assembly of First Nations,
an NGO in Special Consultative
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1. PART 1 INTRODUCTION

1.1. Aboriginal Peoples in Canada

Section 35 of the *Constitution Act, 1982*, of Canada recognizes 3 distinct groups of Aboriginal Peoples in Canada: Indian (First Nations), Inuit, and Métis. This section also recognizes the inherent Aboriginal and Treaty rights of Aboriginal Peoples. For more information regarding the situation of First Nations in Canada, please see **Appendices 1 & 2.**

1.2. The Assembly of First Nations

The Assembly of First Nations (AFN) is a democratically accountable non-partisan organization representing 633 First Nations across Canada. Our constituency is made up of First Nations citizens living both on and off reserve, and in the North. As the national organization representing First Nations citizens in Canada, we are committed to working with the Government of Canada to address the needs and interests of First Nations citizens across the country. The AFN represents all citizens regardless of age, gender or place of residence.

Although we regularly work with our member First Nations on issues related to poverty, health, housing, education, etc., we do not have the resources to fully consult with our member First Nations regarding Canada's report under the Covenant. Therefore this response should only be considered the best advice of the AFN Secretariat.

1.3. First Nations Peoples – Economic, Social and Cultural Rights

First Nations Peoples in Canada, particularly women and children, are at risk as a result of crushing conditions of poverty. As AFN National Chief Phil Fontaine has observed:

> *"…our people are dying earlier and more often than anyone else in [this] country. We have a Third World in our front yard and our back alleys."*

This is a shameful reality in a First World country, and these conditions have a negative impact upon the economic, social and cultural rights of First Nations.

The United Nations Human Rights Committee, in its 1999 concluding observations on Canada's 4th report under the Covenant on Civil and Political Rights, stated that the situation of Aboriginal Peoples is one of Canada's most

pressing human rights issues.[1] Yet, Canadians and politicians who attempt to confront these issues often find themselves facing a paradox: on the one hand, there is awareness of the tragically low standard of living for First Nations people, yet at the same time government and media report that spending on First Nations is constantly increasing. It is fair to ask: what is going on here?

Part of the answer lies in a little-known but significant kind of systemic, fiscal discrimination that ensures First Nations will slip into further inequity with each passing year.

First Nations have the fastest growing population in Canada. The Department of Indian Affairs and Northern Development (DIAND) has reported a population increase from 610,874 to 741,534 since 1996. So, while it is true that program spending has "increased" by 2% a year, when one factors in population growth, there has been an overall decline in the economic stability of First Nations of more than 14% over the last nine years. First Nations governments are, in essence, forced to try to do more with less.

As it stands, the system is designed to maintain this fiscal discrimination in perpetuity. This is a disturbing inequity when compared with the legislated commitment enjoyed by non-aboriginal Canadians (for more analysis regarding how the system treats non-aboriginal people in Canada, please see **Appendix 3**). The results of this policy are evident. Although Canada ranks fifth on the 2005 United Nations Human Development Index, the socioeconomic conditions of First Nations in Canada rank alongside some Third World nations. In October 2004 DIAND developed a Community Well-Being Index and found that there was only 1 First Nation that ranked in the 100 best-off Canadian communities, contrasted with 92 First Nation communities that ranked in the 100 that are worst-off.[2]

There is hope, however. We have made major strides towards addressing these issues over the past 2-3 years, including:

- an Agreement-in-Principle to address the legacy of Residential Schools;
- a series of commitments, made at a landmark First Ministers Meeting aimed at closing the gap in the quality of life between First Nations and other Canadians over a 10-year period, including a series of 5 and 10 year targets, significant new financial commitments ($5B over 5 years), and agreement to hold further First Minister's Meetings to measure progress; and

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[1] United Nations, *Concluding observations of the Human Rights Committee: Canada. 07/04/99. CCPR/C/79/Add.105. (Concluding Observations/Comments).* Available at: http://www.unhchr.ch/tbs/doc.nsf/0/e656258ac70f9bbb802567630046f2f2?Opendocument

[2] McHardy, M. & O'Sullivan, E., *First Nations Community Well-Being in Canada: The Community Well-Being Index (CWB), 2001*. 2004. Available at: http://www.ainc-inac.gc.ca/pr/ra/cwb/cwb_e.pdf

- the signing of a First Nations-Federal Crown Political Accord that sets out an agenda and process for joint work between First Nations and the federal government.

To date, the government of Canada has not committed any of the resources to implement the agreements and commitments referred to above. Failure to implement these commitments and agreements would represent a significant set back in recent progress made by First Nations and the federal Crown to address First Nations social, economic and political issues. Nevertheless, the AFN and First Nations remain optimistic that the Government of Canada will honour the Agreement in Principle on Residential Schools, the First Nations-Federal Crown Political Accord and commitments made during the First Minister's meeting at Kelowna.

Residential Schools Agreement

The historic and unprecedented Agreement in Principle for Reconciliation and Compensation for Indian Residential School Survivors was approved by the Federal Cabinet on November 21st, 2005. This agreement is demonstrably fair and just to the survivors, and will lead and contribute to reconciliation, respect, and recognition. This settlement includes an improved compensation process for victims of sexual and physical abuse, a lump sum payment for former students; a Truth and Reconciliation Commission with both national and regional processes; and five years of additional funding for the Aboriginal Healing Foundation. The Agreement in Principle also calls for an expedited process to resolve the claims of the elderly. Survivors currently involved in class action lawsuits also qualify for all of the benefits of the settlement package, including compensation. We continue to vigorously pursue the government of Canada to make a full public apology as Residential School survivors deserve no less and there is precedent for this. For example, the apology that was made to Japanese Canadians who were dispossessed and confined to internment camps by the government of Canada during the Second World War.

First Ministers Meeting

At the First Ministers meeting with National Aboriginal Leaders in Kelowna, BC, on November 24 & 25, 2005, First Ministers and First Nation Leaders committed to strengthening relationships between First Nations and federal, provincial and territorial governments. In that spirit, First Ministers and National Aboriginal Leaders launched a 10-year dedicated effort to closing the gap in the quality of life that now exists between Aboriginal peoples and other Canadians. At the meeting, the government of Canada announced several commitments to First Nations in the areas of relationships, health, education, housing and economic opportunities. This was a landmark meeting in that it achieved a consensus on

the part of all 13 provincial and territorial premiers, the Prime Minister, and 5 National Aboriginal Organizations. The implementation of the Kelowna Agreement will constitute an unprecedented achievement for First Nations in Canada.

First Nations-Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments

On May 31, 2005 the Assembly of First Nations and the Government of Canada concluded the First Nations-Federal Crown Political Accord on the Recognition and Implementation of First Nations Governments. In the Political Accord, the Parties committed to work jointly to promote meaningful processes for reconciliation and implementation of section 35 Aboriginal and Treaty rights.

This Political Accord marks an important starting point for First Nations and the Federal Crown in recognizing First Nation governments and addressing many of the underlying causes of current social and economic problems facing FirstNations peoples and communities. The backlog of unresolved specific claims, outstanding Aboriginal title claims, unimplemented treaties and lack of negotiated self-government agreements are well known. These are among the issues that the parties intend to address through the Political Accord. The effectiveness of the Federal Government to address its outstanding legal and financial obligations will be determined by its ability to work together with First Nations to develop and improve policy.

The Political Accord identifies at least two other important areas of joint work: capacity building; and machinery of government changes. All parties agree that the *Indian Act* and Department of Indian Affairs are outdated instruments that do not support First Nations economic growth and self-reliance. The ultimate elimination of both is therefore a critical part of the creating sustainable solutions for First Nations and for Canada.

More detail regarding the Residential Schools Agreement in Principle can be found in **Appendix 4**. More detail regarding the First Ministers Meeting can be found in Part 2, Articles 10, 11, 12 and 13, as well as **Appendix 5**, Kelowna Agreement and *First Nations Implementation Plan*. More detail regarding constructive engagements can be found in Part 2, Article 1 of this report, as well as **Appendix 6**, the *First Nations- Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments.*

2. PART 2 – MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

2.1. Article 1 Right to Self Determination

As Canada has not provided any written text on this article, we cannot comment on their response. However, we would like to provide the following comments on Canada's implementation of this Covenant right with respect to First Nations Peoples.

Self-government and self-determination are terms that are often used interchangeably to describe the anticipated outcome that will follow recognition of First Nations jurisdiction and reconciliation of First Nations jurisdiction with the jurisdiction of the Crown.

From the time of first contact, First Nations have asserted an inherent right to self-government; inherent because it was our right and reality from time immemorial. We have never relinquished our right to self-government or self-determination. This is reflected in the following passage from an AFN publication entitled *Why Self-Government?*:

> *"When the Europeans arrived, the First Nations of this land were self-governing. Since then, we have never abandoned our right to self-government. We entered into treaties on a nation-to nation basis with the Crown and later with the Government of Canada. In those treaties and in our negotiations since, we have insisted on our collective rights, especially the right to govern ourselves according to our own unique histories and cultures. We do not and will not be homogenized into the 'mainstream'. But the practical tools of governance were denied to us as we were restricted to reserves and made subject to the Indian Act. At the same time, self-sufficiency was taken from us along with our land and its ability to support our way of life. This history was not chosen by us. To be self-sufficient, to rely on ourselves, we must be free and able to make our own choices. It is not our choice to be dependant on others; it is a state imposed upon us through the denial by others of our right to govern ourselves. We continue to assert that the key to our self-sufficiency is our ability and freedom to govern ourselves."*[3]

Self-government as a specific form of self-determination for First Nations has been a point of particular contention and confusion between First Nations and non-Aboriginal Canadians. To many non-Aboriginal Canadians self-government can be difficult to understand, but First Nations assert that self-government answers many of the current challenges that they face including poverty, disintegrating social and economic infrastructure, and social conflict.

[3] AFN, *Why Self-Government? Bridging the Communication Gap*. 2005

Evidence from the western scientific tradition is reaching the same conclusion that First Nations have long declared. The evidence comes from across the spectrum of economic policy, social policy, financial accountability and legal rights.

What the evidence suggests is that self-government is the key determinant of success in any society. Members of the Harvard Project on American Indian Economic Development[4] have been studying Indian tribes in the United States and First Nations in Canada for more than 15 years. Following extensive research, they have been able to demonstrate that economic development and self-sufficiency are closely linked to the existence of three critical factors:

- **practical sovereignty**, meaning genuine decision-making power over internal affairs, governance, resources, institutions, and development strategies;
- **capable governing institutions**, which exercise power effectively, responsibly, and reliably; and,
- **cultural match**, which are formal institutions of government that match Indigenous conceptions of how authority should be organized and exercised.

Similarly, the Report of the Royal Commission on Aboriginal Peoples (RCAP) in 1996 found evidence that economic growth will happen if control over lands and resources is restored to Aboriginal peoples. In particular, the Commissioners noted that:

> *"Where land claims have been settled, Aboriginal people have taken control of resources and invested in their communities; regional economies have expanded, benefiting all who live there. When Aboriginal people control resources and the businesses that exploit them, a larger part of the income generated is likely to remain in the region instead of being transferred to urban centres. The result is that more money is spent locally, and in turn more jobs and greater business activity are generated… Indeed, in some parts of the country, where land claims have been settled or Aboriginal people have successfully launched businesses, we can already glimpse a better future with a stronger economic base for Aboriginal people."*[5]

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[4] Stephen Cornell, *Statement on tribal self-governance and nation-building by Professor Stephen Cornell before the Standing Committee on Aboriginal Affairs*, House of Commons, Ottawa, Canada, June 6, 2000, available at http://www.udallcenter.arizona.edu/publications/ottawa.html

[5] Canada, *Report of the Royal Commission on Aboriginal Peoples*, 1996, volume 5, chapter 2, available at http://www.ainc-inac.gc.ca/ch/rcap/sg/ck2_e.pdf

As these and other studies have shown, the solution to most social and economic problems facing First Nations communities today lies in restoring First Nations jurisdiction over their people and territories. Recognition and restoration of First Nations jurisdiction will enable First Nations to develop solutions to the problems facing their communities that are responsive to the unique needs of their peoples.

Recognition and reconciliation of First Nations jurisdiction or self-determination will foster real, measurable improvements in community well-being. For example, according to a groundbreaking study by psychologists at the University of British Columbia, the presence or absence of six factors have a significant role as predictors of suicide among youth. Each of these relate specifically to the degree of self-government being exercised at the local level, the control over institutions and the cultural sensitivity with which those institutions are run. As noted by the authors of the study, "*…it also proved to be the case that having more of these factors present in the community was decidedly better: the observed five-year youth suicide rate fell to zero when all six were found to be true of any particular community.*"[6]

At the domestic level, Canada, through policy statements, recognizes the right of First Nations to self-government. As noted earlier, Section 35 of the *Constitution Act* recognizes inherent aboriginal and treaty rights[7]. The Government of Canada's *Inherent Right Policy*[8] recognizes the right of self-government as an aboriginal right. Yet, the Government of Canada does not fully support implementing self-government. The *Inherent Right Policy* imposes arbitrary limitations on how self-government is to be achieved, while the Government specifically rules out acceptance of the legal primacy of the right to self-government over its own policy-based interpretation. Meanwhile, the Government does not invest adequate resources for First Nations to develop the capacities and institutions needed to manage their own affairs.

Greater investments are needed to make self-government a reality, to develop the appropriate institutions and to build the capacity needed to carry out the daily business of First Nation governments. Investments must be of both a political and financial nature to create a favourable climate for economic development and to build toward sustainable self-sufficiency on reserves.

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[6] Chandler, M.J. & Lalonde, C.E., *Cultural Continuity as a Hedge Against Suicide in Canada's First Nations*. 1998, *Transcultural Psychiatry,35*(2), 193-211, available at http://web.uvic.ca/~lalonde/manuscripts/1998TransCultural.pdf

[7] Canada, *The Constitution Act, 1982*, Part II, S.35, available at http://laws.justice.gc.ca/en/const/annex_e.html#I

[8] Canada, Federal Policy Guide, *The Government of Canada's Approach to the Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, 1995, available at http://www.ainc-inac.gc.ca/pr/pub/sg/plcy_e.html

The Canadian Government has had the formula backwards all along. It has withheld recognition of self-government power from First Nations, keeping the decision-making power to itself, and then wondered why investment in development has failed. Conversely, First Nations have advocated for purposeful, results-based investment promoted through support for self-government. It has been shown to be *the* critical factor in developing economic self-sufficiency and tackling many of the persistent social problems that have plagued First Nations Peoples for decades. This has been demonstrated through a range of independent sources including academics, public servants, and others with no vested interest in specific outcomes.

Self-government, as a specific form of self-determination, is the hope for the future. It is the way forward. It will lead First Nations out of the cycle of poverty that has marked their history since the original loss of control over governance to colonial powers more than a century ago. And we are beginning to take tentative steps in the right direction. For example, the *First Nations-Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments* was signed on Tuesday, May 31, 2005. This Political Accord represents an important step in re-defining the place of First Nations in the Canadian context.

The Political Accord represents the first formal step in focusing concerted federal Crown and First Nations attention on working together to elaborate modern and joint policy on claims, treaties and self-government. This Political Accord marks an important starting point for First Nations and the Federal Crown to address many of the underlying causes of failed negotiations. The backlog of unresolved specific claims, outstanding Aboriginal title claims, unimplemented treaties and lack of negotiated self-government agreements are well known. The effectiveness of the Federal Government to address its outstanding legal and financial obligations will be determined by its ability to work together with First Nations to develop and improve policy.

The Political Accord identifies at least two other important areas of joint work: capacity building and machinery of government changes. All parties agree that the *Indian Act* and Department of Indian Affairs are outdated instruments/institutions that do not support long-term First Nations economic growth and self-reliance. The ultimate elimination of both, through the transfer of resources and jurisdiction to First Nations, is therefore a critical part of working together to create sustainable solutions for First Nations, and for Canada.

The Priorities of the Political Accord are:

- Land claims policy renewal to settle claims;
- Self-government policy renewal to produce self-government agreements;
- Treaty implementation policy development to address treaty issues;

- Governance capacity building to address professional public service requirements and accountability at community level; and
- Reconciliation principles to guide the relationship overall in all areas of federal and First Nation relations.

A key feature of the Political Accord is a Joint Policy Review and Renewal Structure. Unilateral policy-making does not work, therefore, a joint policy renewal and development approach should produce mutually acceptable change and development. This approach will also downsize the federal bureaucracy and focus on First Nations self-reliance.

Finally, the Political Accord will also address some related and long standing issues, including: creating a federal Aboriginal justice strategy to deal with systemic problems in the justice system producing over incarceration rates; Matrimonial Real Property on Reserve to deal with discriminatory treatment of First Nations women; and Citizenship to address the issue of discriminatory affects of *Indian Act* registration scheme which has generated a significant number of legal challenges against the Federal Government.

This Political Accord commits the parties to on-going, high level constructive engagements between First Nations and Canada, and is critical to ensuring the Covenant rights of First Nations Peoples. For more information on the Political Accord, please see **Appendix 6**.

2.2. Article 3 Equal Rights of Men and Women

Article 3 of the International Covenant on Economic, Social and Cultural Rights commits signatories to ensure that the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.

Repeal of Section 67 of the *Canadian Human Rights Act*

Section 67 of the *Canadian Human Rights Act* ("CHRA") is an area where the Government of Canada has arguably failed to fully live up to the spirit and intent of Article 3 of the Covenant.

Section 67 provides that the *CHRA* does "not affect any provision of the *Indian Act* or any provision made under or pursuant to that Act." In other words, section 67 of the *CHRA* effectively excludes members of First Nations communities who fit within the definition of "Indian", as defined in the federal *Indian Act* and who live or work on an Indian reserve or *Indian Act* community, from filing complaints with the Canadian Human Rights Commission in respect of any action arising from or pursuant to the *Indian Act*.

Report of the Canadian Human Rights Commission

On October 26, 2005, the Canadian Human Rights Commission issued a report entitled "A Matter of Rights – Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the *Canadian Human Rights Act"* (the "Report"). In the Report, the Canadian Human Rights Commission recommended an immediate repeal of section 67 of the *CHRA*.

The Commission also recommended that the federal government, in consultation with First Nations over an 18-30 month period, develop an "interpretive provision" to guide the Commission and Tribunal in adjudicating complaints against First Nations governments, agencies and institutions. The Commission further recommended that in the context of self government and land claim negotiations, that Canada and First Nations consider including specific provisions addressing human rights protection and promotion in final agreements (e.g., Westbank and Tlicho).

First Nations Interests and Concerns

The Assembly of First Nations is on record as supporting the repeal of section 67 of the *CHRA*. However, there are many serious implications associated with the repeal of section 67. In particular, the following interests and concerns of First Nations must be addressed prior to the repeal of section 67 of the *CHRA:*

- ***Aboriginal and Treaty Rights:*** Section 35 of the *Constitution Act, 1982* recognizes and protects the collective Aboriginal and Treaty rights of First Nations Peoples. In addition to possible ancillary amendments to the *Indian Act* that might flow from a repeal of section 67, there is also the potential for introduction of the *CHRA* human rights framework to First Nations communities to impact the constitutionally protected collective Aboriginal and Treaty rights of First Nations Peoples. The Report does not provide sufficient or substantive analysis regarding the impact on section 35 Aboriginal and Treaty rights that would result from a repeal of section 67 of the *CHRA*.

  As noted by the Supreme Court of Canada in *Van der Peet*, reconciliation of Crown sovereignty with the prior existence of Aboriginal societies is the purpose underlying s. 35:

  > More specifically, what s. 35(1) does is provide the constitutional framework through which the fact that aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the sovereignty of the Crown. The substantive rights which fall within the provision must be defined in light of this purpose; the aboriginal rights recognized and affirmed by s. 35(1) must be directed towards the reconciliation of the pre-existence of

aboriginal societies with the sovereignty of the Crown. (*Van der Peet,* para. 31)

As Aboriginal and Treaty rights are constitutionally protected, the honour of the Crown and the requirement for a reconciliation of First Nations and Crown sovereignty would demand, at a minimum, that the Government of Canada analyze the potential impact of repeal of the *CHRA* on the Aboriginal and Treaty rights of First Nations Peoples, and where necessary that the Crown consult with First Nations regarding such impacts. Depending on the circumstances, the federal Crown may also be required to accommodate the interests of First Nations. This cannot occur if the Crown unilaterally repeals section 67 of the *CHRA* without conducting the necessary impact studies, engaging in consultations with First Nations, and where necessary, accommodating and reconciling First Nations Aboriginal and Treaty rights with the Crown interests.

- ***Individual and Collective Rights:*** First Nations Peoples have a very different concept of rights from non-First Nations Peoples. First Nations values emphasize collective rights, rather than the philosophy that highlights individual rights.

  It is important to note that the *Indian Act* not only contained provisions that undermined the "individual rights" of First Nations Peoples. The *Indian Act* was also an instrument used by the federal Crown to undermine the "collective" economic, social, cultural and political rights of First Nations Peoples in Canada.

  The collective right of First Nations Peoples to define their own citizenship was undermined by the introduction of various provisions in the *Indian Act* regarding eligibility for membership in First Nations communities and the entitlement of persons who met the eligibility requirements for membership in an "Indian band" to obtain interests in land on Indian reserves, and thus reside in First Nations communities.

  Traditional First Nations governments were undermined by the introduction of band council governments. Traditional ceremonies, including potlatches and sundances, which are integral to the social, political, cultural and economic fabric of many First Nations communities throughout Canada were outlawed under earlier versions of the *Indian Act*. In other words, the entire *Indian Act* is an oppressive tool that has been used for over 100 years to undermine the economic, social, cultural and political rights of First Nations Peoples.

  In other words, individualistic and Western democratic values and models were unilaterally imposed on First Nations Peoples, through instruments such as the *Indian Act,* with tragic social and economic consequences. This

is clearly evidenced by the significant gap in the standard of living that currently exists between First Nations and other social and ethnic groups in Canada.

At present, prior to any repeal of section 67, we have a significant opportunity in Canada to find an appropriate balance between individual and collective rights that does not result in the further undermining of the collective Aboriginal and Treaty rights of First Nations Peoples. This would be entirely consistent with the approach recommended in the United Nations Draft Declaration of the Rights of Indigenous Peoples, which calls on states to take measures to assist indigenous peoples to protect their cultures, languages and traditions.

However, in previous bills to repeal section 67 of the *CHRA* and other proposed consequential amendments, there has arguably been no effective balance struck between individual and collective rights. Nor does it appear that there has there been any meaningful effort to consult with First Nations regarding the criteria that would have to be satisfied to strike such an appropriate balance between individual rights and collective, constitutionally protected section 35 Aboriginal and Treaty rights.

The Senate recently proposed an amendment to section 16.1 of the *CHRA,* which arguably represents an attempt to accommodate the collective rights of First Nations Peoples with that of individuals. The proposed revision to section 16.1 reads:

> *In relation to a complaint made under this Act against an Aboriginal governmental organization, the needs and aspirations of the aboriginal community affected by the complaint, to the extent consistent with principles of gender equality, shall be taken into account in interpreting and applying the provisions of this Act.*

From the perspective of First Nations, this proposed revision does not come close to providing a solid foundation to ensure that an appropriate balance is struck between individual and collective rights and values. Much more work and consultations are required to achieve the right balance.

In its Report, the Human Rights Commission recommended that an interpretive provision be introduced to assist the Commission and Tribunal in adjudicating claims against First Nations governments, agencies and institutions. An interpretive provision may provide a mechanism for achieving an appropriate balance between individual and collective rights. However, until such a mechanism is jointly developed by the federal Crown and First Nations, we will be unable to ensure that such an appropriate balance has been struck.

Therefore, it is absolutely critical that an interpretive provision be developed before any legislation is introduced to repeal section 67 of the *CHRA*. Otherwise, there will be no safeguards in place to protect the collective rights and values of First Nations Peoples from further erosion by the unilateral imposition of individual rights and values on First Nations communities. As noted previously, the United Nations Draft Declaration of the Rights of Indigenous Peoples calls on states to take measures to assist indigenous peoples to protect their cultures, languages and traditions. The unilateral repeal of section 67, without the concomitant introduction of an interpretive clause that provides a solid foundation for balancing individual and collective rights would arguably be inconsistent with the approach recommended in the United Nations Draft Declaration of the Rights of Indigenous Peoples.

We would ask for the support of the international community to assist us in ensuring that the mistakes of yesteryear are not repeated. In particular, we would ask the international community to implore the Government of Canada to not proceed with any unilateral repeal of section 67 of the *CHRA* without first seeking an appropriate balance between the collective rights of First Nations Peoples with the individual rights and values reflected in the *CHRA*. Otherwise, we can only anticipate a further erosion of the collective rights of First Nations Peoples and more social upheaval as First Nations struggle to cope with further impacts on our collective social, cultural, political and economic rights.

- ***Non Derogation Clause*:** The Commission does not support the inclusion of a non-derogation clause in the *CHRA*. The Report argues that "such a provision would be redundant" because section 25 of the Charter is a constitutional provision that all Canadian laws are subject to. However, explicit recognition and protection of Aboriginal and Treaty rights through inclusion of a non-derogation clause in the *CHRA* would provide First Nations with greater certainty and protection against infringement.
- ***Self-Government and Cultural Match:*** Studies conducted by the Harvard Project on Economic Development concluded that jurisdiction and cultural match are among the variables that will determine the success of economic development on First Nations lands. Jurisdiction and cultural match are also likely preconditions for First Nations to successfully address social and political problems in their communities. Under the *CHRA* human rights framework, it is the Canadian Human Rights Commission and Tribunal that will be responsible for adjudicating complaints against First Nations governments, agencies and institutions. Inadequate consideration has been given to the question of whether the Canadian Human Rights Commission and Tribunal process are appropriate vehicles for resolving human rights and discrimination complaints involving First Nations Peoples and restoring social harmony in First Nations communities.

In the Report, the Commission floats the idea of the possible enactment of a First Nations Human Rights Act and the possible establishment of First Nations institutions similar to the Commission and Tribunal. However, there is little or no discussion of the need for any possible new institutions to be developed consistent with the cultures and traditions of the various First Nations throughout Canada. If the Government of Canada is seriously considering the development of First Nations institutions to adjudicate or play a role in adjudicating complaints involving First Nations governments, agencies and institutions, then consultations on this matter should be conducted with First Nations before any repeal of section 67 of the *CHRA*.

First Nations further submit that the Government of Canada should devote as much attention to restoring the cultural and political rights of First Nations as it is currently devoting to addressing shortcomings of the *CHRA* human rights framework in connection with the individual rights of First Nations Peoples. In addition to seeking the support of the international community to ensure that shortcomings of the *CHRA* are addressed, we would ask for the support of the international community to assist us in ensuring that the Government of Canada devotes equal attention to restoring the cultural and political rights and dignity of First Nations. As noted previously, such an approach would be consistent with the recommendations of the United Nations Draft Declaration of the Rights of Indigenous Peoples, which calls on states to take measures to assist indigenous peoples to protect their cultures, languages and traditions.

- ***Interpretive Clause:*** As noted in the preceding discussion, the Assembly of First Nations would prefer that First Nations institutions be recognized or developed to consider complaints against First Nations governments, agencies and institutions. However, if complaints against First Nations will be decided by the Canadian Human Rights Commission and Tribunal, then the Assembly of First Nations strongly endorses the recommendation by the Canadian Human Rights Commission that an interpretive clause be developed to guide the Commission and Tribunal in adjudicating complaints.

- ***Consultations Required:*** There is considerable case law in Canada regarding the honour of the Crown and the Crown's duty to consult with First Nations whenever legislative action has the potential to impact existing Aboriginal and Treaty rights protected by section 35 of the *Constitution Act, 1982*. As noted by the Supreme Court of Canada in *Haida Nation,* "the honour of the Crown is always at stake in its dealings Aboriginal peoples."

  In 1977, when the *CHRA* was enacted, the *Indian Act* contained numerous provisions that discriminated against or undermined the "individual" rights of First Nations citizens, who fit within the definition of "Indian" as defined in the *Indian Act*. Section 12(1)(b) of the *Indian Act*, which resulted in an "Indian" woman losing her "Indian" status upon marriage to a "non-Indian"

and the lack of provisions relating to the division of matrimonial property on Indian reserves are among the provisions in the *Indian Act* that discriminated against the "individual" rights of First Nations Peoples. If the human rights framework afforded by the *CHRA* was applied to reserves and "Indians" in 1977, this would have arguably resulted in a de facto amendment of these discriminatory provisions of the *Indian Act*.

Although the legal duty of the Crown to consult with First Nations regarding legislation and developments that could affect Aboriginal and Treaty rights was in its formative stages in 1977, the federal Crown, in recognition of its evolving obligation to consult with First Nations Peoples, was reluctant to extend the application of the *CHRA* to First Nations communities without first engaging in consultations with First Nations regarding possible ancillary or resultant amendments to the *Indian Act* that would likely follow the application of the *CHRA* to "Indians" and reserves.

Therefore, when the *CHRA* was introduced in 1977, the Government of Canada assured First Nations governments that it would not apply the *CHRA* to Indian reserves or amend the *Indian Act* without full consultations with First Nations communities. The then Minister of Justice in 1977 stated that "[t]he government has undertaken, in good faith, not to amend the *Indian Act* except as a result of that process of consultation...it would be very wrong at this particular time to upset what is a working relationship...towards the revision of the *Indian Act*."

The jurisprudence has evolved since 1977 making it legally incumbent on Canada to consult with First Nations where there may be an infringement on Aboriginal and Treaty rights. The duty to consult is grounded in the "honour of the Crown".

First Nations must be properly consulted on the proposed repeal of section 67 of the *CHRA* and the development of an interpretive clause. First Nations must also be consulted with respect to any potential impacts on Aboriginal and Treaty rights that may result from the proposed repeal of section 67 of the *CHRA*. Prior to any repeal of section 67, an appropriate balance must also be struck between individual rights and values and the collective, constitutionally protected rights of First Nations Peoples. First Nations must also be consulted on any resultant amendments to the *Indian Act* that would follow a repeal of section 67. The promise of the federal government in 1977 to not amend the *Indian Act* except as a result of a process of consultation is no less salient today than when this statement was made by the then Minister of Justice.

First Nations will take serious exception to the repeal of section 67 without adequate consultation. Failure to adequately consult may amount to a breach of the legal duty of the Crown to consult with First Nations.

We would ask for the support of the international community to assist us in ensuring that the Government of Canada adequately consults with First Nations regarding the possible development of culturally specific First Nations institutions to play a role in adjudicating complaints involving First Nations governments, agencies and institutions, options for achieving a balance between collective and individual rights and the development of an interpretive clause, before any repeal of section 67 of the *CHRA*.

- ***Political Accord on the Recognition and Implementation of First Nations Governments:*** On May 31, 2005, the Assembly of First Nations and the Government of Canada concluded a Crown First Nations Political Accord on the Recognition and Implementation of First Nations Governments. In the Political Accord, the Parties committed to work jointly to promote meaningful processes for reconciliation and implementation of section 35 Aboriginal and Treaty rights. In other words, commitments to collaborative policy development made by the Government of Canada pursuant to the Political Accord warrants a full and inclusive consultation process on the proposed repeal of section 67 and the development of an interpretive clause.

- ***Capacity:*** Many First Nations lack the capacity, resources, institutions and mechanisms to manage the new risk and exposure to potential liability that they would face were section 67 of the *CHRA* repealed. In its Report, the Commission acknowledges that obtaining "adequate human and financial resources to design and implement viable human rights systems" is a critical issue for First Nations and that "First Nations must not be forced to divert resources from critical programs… in order to fulfill statutory human rights obligations". However, while the AFN recommended to the Commission that the federal government ensure that First Nations are adequately resourced to take on any new responsibilities, financial considerations and capacity issues are not adequately addressed by the Commission.

  Consequently, if section 67 is repealed and no financial resources are made available to First Nations for capacity development and for managing the new risks associated with the application of the *CHRA* legislative framework to First Nations communities, then First Nations will likely face significant financial impacts. Therefore, it would be irresponsible of the federal Crown to proceed with a repeal of section 67 of the *CHRA* without ensuring that First Nations are provided with adequate resources, mechanisms and institutions to fulfill new responsibilities and risks.

First Nations Women's Issues

The contribution of First Nations women is essential to the social, economic, cultural and political well being of First Nations Peoples. Research has

demonstrated that the exclusion and discrimination of First Nations women has significant consequences on society. First Nations women make up more than half of the First Nations population, and while First Nations men and women suffer discrimination, it is women who suffer multi-faceted forms of discrimination and face the highest risk of violence and poverty.

In 2004, the AFN established a Women's Council, and works with the Women's Council to ensure First Nations women's interest and perspectives are reflected in all policy directives of the organization. The AFN Women's Council operates in an advisory function to the AFN Executive Committee and the Women's Council Chair sits as a permanent member of the Executive Committee.

The AFN Women's Council is deeply concerned that First Nations women are among the poorest in their communities, and the targets of racial and gender discrimination generally. That the policies and laws of Canada have actively oppressed First Nations Women, diminished their traditional roles and responsibilities, and compromised the respect for First Nations Women in their communities are also concerns.

The impact of colonization and assimilation strategies aided in altering First Nations traditional values and social structures, often replacing or enforcing the colonizers cultural values on First Nations societies. First Nations women's roles and responsibilities in the decision making process throughout North American societies were strategically targeted in the goal of assimilation and loss of culture.

Equal Rights of Men and Women

This year marks the 25th Anniversary of Canada's ratification of the UN Committee on the Elimination of Discrimination Against Women (CEDAW). This is an opportunity not only to celebrate Canada's ratification of the most comprehensive international treaty on women's rights, but also an opportunity to develop a collaborative approach with Canada in advancing to improve the lives of First Nations women and communities. The AFN recognizes that solving the root causes of poverty and violence against women requires a more extensive and collaborative approach and commitment from all of us. The situation of First Nations women, women with disabilities, and poverty more generally, require urgent attention as highlighted in the 2003 UN Committee on the Elimination of Discrimination Against Women (CEDAW).

While we encourage the UN's work in advancing Aboriginal women's interests, it must be recognized that First Nations Peoples have a unique and distinct status as compared Canadian women generally, and those of Inuit and Métis decent. First Nations women have unique and distinct needs and a 'pan-Aboriginal' approach would jeopardize the work that is already in progress on issues such as matrimonial real property and citizenship.

The Women's Council focus of work is consistent with principles and objectives of the *First Nations-Federal Crown Political Accord* in addressing and advancing culturally relevant principles of gender equality, matrimonial real property and citizenship matters. While First Nations women have clearly been discriminated in the *Indian Act*, solutions must not be imposed on First Nations communities in the development of comprehensive resolutions to matrimonial real property. The federal government must support First Nations in resolving and regulating these concerns by providing, among other things, sufficient resources to address long and short term solutions.

The AFN Women's Council participated in a meeting with representatives from the Native Women's Association of Canada (NWAC) and officials of the Department of Indian Affairs and Northern Development in July 2005 to advance discussions on matrimonial real property. The purpose of the meeting was to discuss the recommendations proposed in the parliamentary committee reports on the issue of on-reserve matrimonial real property and to discuss what short and long term action the government needs to take on the subject including how potential consultations on this issue should be structured. A Discussion Paper entitled, *Matrimonial Real Property: Achieving, effective comprehensive resolution* was developed including a proposal that was submitted to the federal government in October 2005 that recommends matrimonial real property regional forums take place with the inclusion of First Nations women in each of the ten regions throughout fiscal year 2006-2007.

Government Response to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development

On October 6, 2005, the Government of Canada issued a report to the House of Commons Standing Committee on Aboriginal Affairs and Northern development which outlined some of the key concerns the AFN identified on the issue of matrimonial real property (MRP). The AFN would like to reiterate that while an immediate resolution of MRP is required, the Political Accord Joint Steering and related processes must be utilized for short-term as well as immediate and long term possible legislative impacts.

Government Response to the Standing Senate Committee on Human Rights

On October 6, 2005, the Government of Canada issued a response to the Standing Senate Committee on Human Rights that outlined, among other issues, the immediate application of provincial/territorial family laws on reserve. Rather than moving to the incorporation of provincial legislation in the absence of a proper analysis of the s. 35 rights of First Nations, the AFN reiterates that the Government of Canada has an obligation to explore options respectful of the inherent right of self-government; First Nations must have their inherent jurisdiction in relation to matrimonial property recognized and implemented.

In addition, it must be kept in mind that provincial matrimonial property regimes were not developed with the unique land regimes and cultural contexts of First Nations reserve communities in mind. Such an imposition of provincial law will indisputably burden courts and delay access to justice while further alienating First Nation local decision making and the application of culturally relevant community solutions. Solutions must not be imposed on First Nation communities in the development of comprehensive resolutions to MRP, and the federal government must support First Nations in resolving and regulating these concerns including sufficient resources to address the long and short term solutions.

First Nations Citizenship

Assimilation of First Nations Peoples has been the stated or effective policy of the Government of Canada since Confederation. Efforts have been many and varied, but none more clear in their intent than the control and denial of "status" through the *Act for the Gradual Enfranchisement of Indians* (1869) and the *Indian Act* (1876).

This historic discrimination was summarized in *Corbiere v. Canada* [1999] 2 S.C.R. 203, where the Supreme Court of Canada found:

> *"In the pre-Confederation period, concepts were introduced that were foreign to Aboriginal communities and that, wittingly or unwittingly, undermined Aboriginal cultural values. In many cases, the legislation displaced the natural, community-based and self-identification approach to determining membership -- which included descent, marriage, residency, adoption and simple voluntary association with a particular group -- and thus disrupted complex and interrelated social, economic and kinship structures. Patrilineal descent of the type embodied in the Gradual Civilization Act, for example, was the least common principle of descent in Aboriginal societies, but through these laws, it became predominant. From this perspective, the Gradual Civilization Act was an exercise in government control in deciding who was and was not an Indian…. This legislation, for the first time, instituted the policy that women who married men without Indian status lost their own status, and their children would not receive status. The rationale for these policies, given at the time, focused on concerns about control over reserve lands, and the need to prevent non-Indian men from gaining access to them…. These were not the only people who lost their status. The enfranchisement provisions of the Indian Act were designed to encourage Aboriginal people to renounce their heritage and identity, and to force them to do so if they wished to take a full part in Canadian society. In order to vote or hold Canadian citizenship, status Indians had to "voluntarily" enfranchise. They were then given a portion of the former reserve land in fee simple, and they lost their Indian status. At various times in history, status Indians who*

received higher education, or became doctors, lawyers, or ministers were automatically enfranchised. Those who wanted to be soldiers in the military during the two World Wars were required to enfranchise themselves and their whole families, and those who left the country for more than five years without permission also lost Indian status. This history shows that Aboriginal policy, in the past, often led to the denial of status and the severing of connections between band members and the band. It helps show why the interest in feeling and maintaining a sense of belonging to the band free from barriers imposed by Parliament is an important one for all band members, and especially for those who constitute a significant portion of the group affected, who have been directly affected by these policies and are now living away from reserves, in part, because of them."

Passed in 1985, Bill C-31 amended the registration and membership provisions of the *Indian Act*. The three objectives guiding those amendments were: removal of discrimination; restoring status and membership rights; and increasing control of Indian bands over their own affairs. It called for the return of Indian status to those people who had lost their status due to discriminatory marriage provisions or enfranchisement policies of earlier federal legislation.

However, reinstatement is limited to the person who lost it and one generation following; grandchildren are not eligible. A person is entitled to register under s.6(1) of the *Indian Act* only if both parents are status Indians, or entitled to registration under either s. 6(1) or 6(2). Children who have only one Indian parent registered under s. 6(1) are to be registered under s. 6(2) of the *Act*. Children having only one Indian parent registered under s. 6(2) are not entitled to registration at all. Therefore, a parent registered under s. 6(2) cannot pass on status unless the other parent is also a registered Indian. Children of the women first reinstated by Bill C-31 fall under s. 6(2), while the children of Indian men who married out are registered under s. 6(1) and can pass down their status. Gender discrimination is obviously still evident under the present circumstances.

The effects of these amendments were significant. A number of individuals, mostly women, had their Indian status restored by Bill C-31 resulting in an incremental population increase of about 175,000 registered Indians by 1999. However, population projections show that due to the eligibility provisions of the Bill, and the effects on children, the registered Indian population is expected to peak in about two generations and then begin to decline dramatically. Some projections suggest a termination point within two to three generations due to the "blood quantum" provisions of Bill C-31.

Bill C-31 allowed that all First Nations' communities had the right to determine their own membership but the definition of Indian status would continue to be determined by the *Act*. First Nations had until 1987 to establish their own membership codes. These codes had to be approved by the Minister of Indian

Affairs. Some 232 First Nations have created rules governing entitlement to band membership. With exceptions, these rules can create "classes of citizens" within First Nations communities with differing rights and entitlements. Lands and resources such as housing were not provided to First Nations to offset the number of First Nations' citizens wanting to return to their communities. Consequently, some First Nations communities established restrictive membership codes to protect their limited lands and resources. This is one of the reasons for the amount of litigation on this issue.

Significant gender discrimination remains, some of which is subject to ongoing litigation, and control over membership remains with the Crown, leading to other forms of discrimination. The AFN submitted a proposal on Citizenship to the federal government in September 2005 that sets out a joint process to deal with issues of Citizenship, Status, and Bill C-31. Implementation of this proposal would provide the foundation to address these issues in a manner contemplated by the *Joint Committee Report*.

The AFN is awaiting confirmation on the status of both its Citizenship and Matrimonial Real Property proposals. Adoption of these proposals on the part of the federal government would ensure that appropriate resources and measures are taken to eliminate discrimination against First Nations women and communities on a range of matters.

2.3. Article 6 Right to Work

First Nations community members have a right to work, to have access to employment opportunities and the required training and education. Active measures, such as developing employment readiness and life skills, as well as providing training is required to provide community members with the required tools and skills to access the job market. These active measures must, however, be designed and delivered in a culturally appropriate and adequate manner, so that First Nations community members feel comfortable accessing the services and support.

Economic development opportunities are also required to provide community members with employment opportunities to access the labour market. Without the opportunity for communities to develop economically, it is not realistic to expect community members to access employment. Child care is also an important part of enabling First Nations community members to exercise their right to work. Without proper child care, First Nations parents cannot access employment given that they must remain at home to care for their children.

First Nations persons living with disabilities often require additional employment supports to exercise their right to work. Within this range of supports, adapted transportation, specialized computers, specific employment, life skills training and accessible buildings are all priorities. Although these

individuals are living with disabilities, this should not hinder their right to find gainful employment.

Further, we would also like to take this opportunity to comment on the statement in Article 98 of Canada's response that "*…the lead department of the Strategy, works with five national Aboriginal organizations - the Assembly of First Nations, the Inuit Tapiriit Kanatami…the Metis National Council, the Congress of Aboriginal Peoples, and the Native Women's Association of Canada.*" This statement is extremely problematic because of its failure to distinguish the different kinds of national Aboriginal organizations operating in Canada.

The Assembly of First Nations is a democratically accountable, representative political non-governmental organization. As such, it has a clearly defined constituency, a Charter, and a mandate emanating from its constituency. This said, not all national Aboriginal organizations are constituted on the same basis, nor do they have the same mandate to represent a given constituency. Lumping the AFN in with a group of other national Aboriginal organizations -- without differentiating those that are politically representative from those that are not -- undermines the role that the AFN is mandated to carry out nationally and internationally.

The AFN is fully accountable to Chiefs and First Nations citizens across the country. There are other organizations that claim to represent the views of citizens residing off-reserve, but these are mainly dues-paying organizations wherein anyone can buy a membership. It is not clear who these organizations actually represent, and these groups cannot account for their membership or identify who comprises their membership. The AFN has a clearly defined membership and all First Nations are eligible to be members and participate in AFN meetings. The Government of Canada is obligated to recognize this.

2.4. Article 9 Right to Social Security

Currently, income assistance cheques are provided to First Nations community members who require financial support to help meet their basic needs. The Indian and Northern Affairs Canada (INAC) policy is structured to provide services/support to First Nations community members equal to what is provided by a respective province. The reality, however, is otherwise.

INAC funding is simply not adequate to meet the First Nations needs for Income Assistance. Income assistance workers are often overworked, underpaid and do not have access to training. Their workload is such that case file management is often lagging behind and income assistance workers are close to burning out. While First Nations wish to have jurisdiction over the delivery of income

assistance in their communities, adequate resources for case management are required.

Furthermore, social security is imperative for our community members who are currently still living with the scars of their past. A social safety net is required to enable community members who require healing to do so prior to proceeding to gainful employment where such opportunities exist.

Many family benefits/supports, such as the GST credit and Old Age Security/Guaranteed Income Supplement (OAS/GIS), are tax-based benefits. There is a concern that some First Nations community members are not receiving the full benefit of such measures. Further research is required to identify potential barriers in accessing entitled supports and bringing forward recommendations to increase take up.

2.5. Article 10 Protection of the Family, Mother and Child

Early Learning and Child Care

As a result of regional and national dialogues in December 2003 and March 2005, the AFN has developed its own Action Plan regarding Early Learning and Child Care (ELCC). This plan promotes a First Nations controlled and sustainable child care system that adopts a holistic, culturally appropriate approach.

An effective First Nations Early Learning and Child Care (ELCC) network must be comprehensive and relevant to the needs of First Nations children, families and communities. First Nations ELCC programs and services must reflect the fact that First Nations children are members of distinct Nations and cultural groups, each with its own system of beliefs, values, and traditions. First Nations communities must be supported to develop ELCC approaches based upon their own cultures, and have sustainable, flexible funding that matches population growth.

Family Violence, Child Abuse and Neglect

In 2004, Canada's response to the 2002 United Nations Special Session on Children was presented in the report *A Canada Fit for Children*. In that report, Aboriginal children were recognized as a specific population for whom ongoing concerns existed with respect to the extent to which these children suffer neglect as a result of poverty, and increased risks of maltreatment associated with exposure to violence within their families. These concerns were echoed in the report, released in 2005, on the *Canadian Incidence Study of Reported Child Abuse and Neglect*.

Canada has committed to "improved prevention and intervention services" that improve the capacity of primary caregivers to nurture and care for their children within their family or origin. This commitment has not yet been realized by First Nation families and parents whose children are placed in care at a rate more than twice that of other children in Canada. This is unacceptable. First Nation child welfare agencies remain under-funded and incapable of providing early intervention and preventative services to facilitate children staying in their homes, and in their First Nation communities despite the fact that these services are mandated under provincial legislation relating to child protection.

The Assembly of First Nations has been working for a number of years, along with Child and Family Services agency directors and researchers to demonstrate the need for increased resources and specific funding for least disruptive measures in child welfare cases on reserve. The implementation of the recommendations from the National Policy Review, completed in 2000, also remain outstanding. This is unacceptable. Action must be taken and commitments must fulfilled.

Women's issues and poverty require urgent attention as highlighted by the UN *Committee on the Elimination of Discrimination Against Women* (CEDAW) "*... The Committee is particularly concerned about the inadequate funding for women's crisis services and shelters.*"

The AFN is concerned with the increasing disparities of on-reserve shelters and shelters funded at the provincial level**.** The AFN is working diligently on holistic approaches and solutions in addressing the inequalities that lead to the exploitation and injustice of First Nations women and children, including the underlying socio-economic conditions that make women particularly vulnerable to violence and poverty. The AFN National Chief, Phil Fontaine, worked to ensure that the root-causes of violence against women were a priority at the First Ministers Meeting in Kelowna. The AFN also actively lobbied to support core funding for the Okanagan Nation Transition Emergency House in Penticton, BC, and recently learned that the Province of British Columbia is contributing annualized funding. In this spirit of collaboration and support, the AFN is committed to furthering the objectives of these and other agreements to ensure that appropriate actions are taken in the elimination of violence against women and poverty. To this end, the AFN welcomes the opportunity to work with Canada and its commitments as set out under CEDAW.

The AFN continues to work on mutually supportive activities with the Native Women's Association of Canada (NWAC). The AFN also supported and lobbied actively for the $5 million commitment by the Canadian federal government towards NWAC's Sisters in Spirit Campaign to end violence against women. While the AFN encourages and supports proper funding for NWAC, adequate funding to support the AFN Women's Council is equally vital to ensure that First

Nations women's perspectives, specifically, are represented in complete and effective manner.

2.6. Article 11 Right to an Adequate Standard of Living

We are extremely concerned that the section referring to standard of living barely mentions Aboriginal Peoples, or First Nations Peoples at all. This omission is particularly concerning given the fact that First Nations Peoples are among the most disadvantaged in the country. This is evidenced most starkly by the Community Well-Being Index developed by DIAND in 2004. In it, DIAND found that there was only 1 First Nation that ranked in the 100 best-off Canadian communities, contrasted with 92 First Nations communities that ranked in the 100 that are worst-off.

Measures to Reduce Poverty

The causes of First Nations poverty are complex and interrelated. As such, there is no single solution to address First Nations poverty; we believe that a long-term and comprehensive approach must be developed. Greater resourcing of social programs is one part of the solution in the short-term, but longer-term solutions must involve getting at the underlying sources of the problems. The system itself is broken. The most effective way to address these issues must involve the implementation of First Nations jurisdiction and the right to nation building, along with culturally appropriate economic development opportunities. Put another way, this means recognition along with resource-sharing and power-sharing. We must share in the wealth of the land through the fair and equitable settlement of claims, the protection of Treaty rights and Aboriginal title, and the implementation of our inherent right to self-government.

We need to address the fiscal imbalance affecting First Nations (all our wealth and resources currently flow to federal and provincial governments and privately owned companies) while in far too many cases our people live in poverty. One key element of this is to achieve new fiscal agreements whereby federal, provincial and territorial governments voluntarily vacate some of their revenue streams and enter into legally binding, long term resource revenue sharing agreements with all First Nation governments.

We need the government of Canada to meet its legal obligations as well as to meet the principle of equity: access to a range and level of services reasonably comparable to those enjoyed by other Canadians. Federal government funding for First Nations is intended to provide comparable services, meet lawful obligations and support self-government. However, the funds that First Nations currently receive are insufficient to achieve these goals and, in fact, are declining relative to population growth and inflation. In 1996, the government

instituted a 2% cap on funding increases for the Department of Indian and Northern Affairs. Up to that point, the gap in social and economic conditions between First Nations and the rest of Canada had been slowly closing. In the ten years since the cap was instituted, we have seen the gap re-open substantially because the 2% cap does not reflect inflation or First Nations population growth.

When adjusted for inflation and population factors, however, core funding contributions from the federal government to First Nations have decreased by 13% since 1999-2000. More specifically, funding for housing decreased by 27% between 1996-97 and 2001-2002, and funding for education decreased by 7% in that same time period. One can claim that in pure dollars resources are increasing, but in real dollars First Nations governments are forced to try and do more with less. It is our position that existing resources need to be refocused in ongoing collaboration with First Nations, and that new funding needs to target the achievement of concrete and sustainable improvements in First Nations quality of life.

First Nations Women

Critical steps must be taken to ensure First Nations women's rights to an adequate standard of living are fully considered at the domestic and international levels. The contribution of First Nations women is essential to the social, economic, cultural and political well being of First Nations Peoples. Research has demonstrated that the exclusion and discrimination of First Nations women has significant consequences on society. First Nations women make up more than half of the First Nations population, and while First Nations men and women suffer discrimination, it is women who suffer multi-faceted forms of discrimination and face the highest risk of violence and poverty. A report tabled by Rodolfo Stavenhagen, UN Special Rapporteur on the human rights of Indigenous Peoples states that, "present indigenous women's rights as simply an 'add on' to men's."

Persons with Disabilities

According to the 1991 Aboriginal Peoples Survey, more than a third of Canada's First Nation population lives with a primary or secondary disability compared to one in five in the rest of Canada. In 2005, The AFN undertook to examine the impact of services to First Nation Peoples with disabilities published in a report entitled *Comparative Resource Analysis of Support Services for First Nation People with Disabilities*. The assumptions for this analysis are based on programs provided by the federal government that are specific to First Nations persons with disabilities and disability supports. Disability programs are limited or non-existent in First Nations jurisdictions. Those that do exist do not generally meet the needs of the population they are targeting because:

1. The values and culture are exclusively designed on the basis of non-Aboriginal (Euro-Canadian) rather than First Nations' cultural premises, values or world views.

2. Programs are standardized and are limited in innovation and adaptability to local circumstances and conditions.

3. Social policy and programs are based on individual productivity versus the collective community-based economic interdependence of First Nations communities. This approach looks at the disadvantaged individual within society and not as the society being disadvantaged.

4. The assumptions made for mainstream social programs, services and policies do not hold true for First Nations. The mainstream policy makers assume that First Nations people live in communities that are connected to healthy labour markets with ample access to employment and training opportunities. Many First Nation communities do not have the infrastructure or capital to offer economic opportunities, mainstream markets or other related benefits that mainstream society does.

5. Services are not holistic and do not take the individual or community as a whole into consideration. Social programs and policies are fragmented with limited integration of resources, standards, obligations or reporting. This results in gaps in services, duplication of effort, inefficiencies and approaches that make it impossible for the whole person or whole community to access what is required.

It is the AFN's position that the Federal, Provincial and Territorial Governments need to work with First Nations to address the gaps in services with new funding and programs that reach First Nation Peoples with disabilities no matter where they live. For more information on gaps in First Nations disability supports, please see Appendix 7.

Right to Adequate Housing

Adequate housing is considered a fundamental human right, one that is critical to the overall wellbeing of First Nations Peoples, as it is a key link to education, health, economic opportunities, employment outcomes and a range of other health determinants. Maintaining the status quo will have long term effects on the level of support required for areas such as health, education and policing. Study after study has shown that communities with adequate housing and infrastructure are healthier, better educated, and safer communities. Moreover, poor housing and infrastructure translates into a poor start in life leading to increased difficulties and the need for increased interventions later in life. Children living in substandard housing, contaminated with toxic mould

or lacking safe drinking water, will not have a fair chance to reach their potential and play a meaningful role in their community.

First Nations housing and infrastructure is in crisis. When a comparison is made to the non-First Nation demographic, First Nations communities are at an extreme disadvantage.[9] In fact, they are at such a disadvantage that the housing and infrastructure conditions in First Nations communities are in some cases compared to those in the Third World. Numerous studies over the decades have catalogued the serious problems with housing and infrastructure for First Nations: shortages leading to severe overcrowding; lack of plumbing; no electricity; poor insulation; toxic mould; substandard construction; and, a huge accumulation of units in need of major repair.[10] Due to these and other factors, many families live in a cycle of stress and sickness that is never-ending, placing an additional burden on the already strained health care system.

In October 2005, a State of Emergency was declared in Kashechewan First Nation (Moose Factory Zone) due to the discovery of E. coli in a series of drinking water samples. The community was evacuated to a number of southern cities while the problems were remedied. The evacuation lasted almost six weeks. The incident received unprecedented national media attention leading to a number of significant commitments by the Minister of Indian and Northern Affairs to improve living conditions in the community, including relocating the community to higher ground. As a result of this event, the government made commitments to address similar drinking water problems in other First Nations communities. An evaluation of drinking and waste water systems across the country conducted by the Department of Indian and Northern Affairs indicate that the drinking water in 220 communities remain at high risk and that there are consistently approximately 100 communities that are under boil water advisories.

Changes in funding, initiated by the federal government -- moving the annual allocation away from what was an Indian and Northern Affairs Canada (INAC) Social Housing model, to a Canada Mortgage and Housing Corporation (CMHC) ownership, mortgage model, with little or no consultation from First Nations -- led to the emergence of a series of debt-related issues around rent and mortgage payments where none had existed before. Compounding this problem are the housing programs that have been under-funded for generations.

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[9] For example according to the 2001 census, density rates – an indication of crowding – are approximately twice as high on reserves as they are for the rest of Canada (4.75 vs. 2.5)

[10] Including: April 2003 Report of the Auditor General of Canada to the House of Commons, Chapter 6 – Government of Canada Support to First Nations – Housing On Reserves http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20030406ce.html; and Statistics Canada Aboriginal Peoples Survey: Well-being of the non-reserve Aboriginal population, 2001 89-589-XIE http://www.statcan.ca:8096/bsolc/english/bsolc?catno=89-589-XWE

In addition to these serious funding and programming problems, there are significant demographic factors placing even more pressure on the existing housing stock. The First Nation population is young and rapidly growing, which is placing increased demands on existing family housing units and will increase demand for housing in the future as young people move out and start households of their own. In addition, the reinstatement of the registered Indian status of many First Nation citizens, including a large percentage of women and their children through Bill C-31, has resulted in a substantial increase in the demand for on-reserve housing without a corresponding increase in allocation.[11] This increase in demand, coupled with the poor conditions of existing units, places undue pressure on some First Nations citizens to leave their home communities and migrate to urban areas.

This housing and infrastructure crisis is occurring despite the fact that First Nation Peoples possess Inherent, Treaty and Aboriginal Rights defined in section 35 of the Canadian Constitution. First Nations are adamant that any approach to coordinating services must support First Nations self-governing authorities with targeted and consolidated funding, as well as new integration and partnership models to improve the efficiency and effectiveness of housing and infrastructure delivery. Moreover, as reflected in *Corbiere* (1999), First Nations jurisdiction does not end at the reserve borders, but extends wherever First Nation citizens are living, including in rural, northern and urban areas. First Nation communities want to serve their off-reserve and urban citizens, to assist them in acquiring and maintaining adequate housing wherever they live, and view this as a key element of transformative change.

Ultimately, transformative change is required and success will be gauged not only when the housing back log is completely addressed and the gap in living conditions between First Nation communities and the rest of Canada is closed, but when the full transfer of jurisdiction for housing and infrastructure to First Nations has occurred. However, this process must be community driven and not imposed externally. As such, broad-based consultation seeking local input and support is critical. While the AFN will continue to develop, analyze and inform First Nations of possible options, any new approach must be flexible enough to allow First Nation communities themselves to select options, adopt new options, or maintain current arrangements that are deemed successful in a respective setting.

In this regard, the AFN has developed a *First Nations Housing Action Plan,* based on the following vision: First Nations are seeking a nation to nation and government to government relationship wherein First Nations have the capacity to improve their quality of life through long term, sustainable funding to fulfill

[11] The number of reinstated First Nation citizens totaled over 95,000 in 1995; 60% of these were women.

the Government of Canada's treaty, Aboriginal, and fiduciary obligations in the area of housing and infrastructure.

This will allow First Nations to build a sufficient number of houses to deal with the housing backlog, and the future needs for adequate shelter for First Nations citizens living on or away from their communities. The goal is a First Nations controlled and sustainable housing and infrastructure system that adopts a holistic, comprehensive and culturally appropriate approach. This system will respond to the need for shelter, capacity development and substantial infrastructure developments in First Nations communities. It will also provide options and nurturing towards an environment of ownership, sustainable social housing, employment and economic development, as desired by communities at the local, tribal council, regional and national levels.

While strategic investments are required immediately to relieve the crisis that many First Nation communities are facing, our vision articulates a shift in focus from dependence to a sustainable continuum of First Nation housing and infrastructure systems that will respond to the need for social housing and create opportunities for home ownership, employment and economic development. In order to achieve this goal, First Nations must be effectively and meaningfully engaged in local, regional and national level decision making processes.

The *First Nations Housing Action Plan* provides a comprehensive outline to achieve transformative change in the longer term, as well as immediate improvement to the housing and infrastructure crisis currently experienced by First Nations citizens living on-reserve and away from communities. The Action Plan includes the following elements:

- Sustainable Funding;
- Institutional Development;
- Information & Research Capacity;
- Financing;
- Land Management;
- Human Resources; and
- Away from Community Housing.

For more information, please see **Appendix 8**.

2.7. Article 12 Right to Physical and Mental Health

First Nations Health

First Nations Peoples' health is in crisis. First Nations Peoples, when compared with the Canadian public, face much higher rates of chronic and communicable

diseases, and are exposed to greater health risks because of poor housing, contaminated water and limited access to healthy foods and employment opportunities.

First Nations perceive the state of their personal health as poorer than other Canadians. It is repeatedly documented that First Nations' life expectancy is 5 to 7 years lower, infant mortality 1.5 times higher, and a suicide rate 2.5 times higher than the Canadian public. These problems are in addition to the problems that the Canadian public also faces, such as waiting times and lack of coordination among health providers, services and patient information.

Former Prime Minister Paul Martin recently acknowledged the "shameful conditions" of First Nations Peoples. This deplorable situation has been created despite the fact that First Nations Peoples possess Inherent, Treaty and Aboriginal Rights defined in section 35 of the Canadian Constitution. The declining health status of First Nations Peoples places serious strain on the fiduciary relationship, and especially the duty to consult, between the Government of Canada and First Nations.

The First Nations population is significant, comprising over 700,000 people and making it larger in population than 5 of Canada's 13 provinces/territories. As such, the status of First Nations health and the First Nations health system demands the attention of First Ministers and of all Canadians.

The 2005 United Nations Human Development Report — that showed Canada's ranking as 5th in the world — suggests that increasing public spending and targeting funds to populations most in need, are not enough. The underlying economic and social framework that perpetuates historical and social injustices should be changed. This is the true meaning of transformative change. Research, such as that conducted by Chandler and Lalonde and the Harvard Project, has established the link between cultural continuity and self-determination, and better health and health determinant outcomes.

The Royal Commission on Aboriginal Peoples and the Romanow Report recognized First Nations jurisdiction over the health of First Nations Peoples pursuant to an inherent right to self-government, as well as the potential for new integration and partnership models to improve the efficiency and effectiveness of health systems. First Nations are adamant that any approach to coordinating services must support First Nations self-governing authorities with targeted and consolidated funding. We also view this approach as a key element of transformative change.

Therefore, the AFN has developed a *First Nations Health Action Plan*, based on the following vision: the overall goal of the First Nations Health Action Plan is a First Nations controlled and sustainable health system that adopts a holistic, culturally appropriate approach.

First Nations health authorities, with options for integrated funding and service delivery approaches, will be essential to addressing systemic inequities in health status and access to quality care at the level of individuals, communities and nations. The First Nations Health Action Plan provides a comprehensive plan to achieve transformative change in the longer term, as well as immediate improvement in the health of First Nations.

To achieve the vision of a First Nations controlled health system, the First Nations Health Action Plan is premised on two key concepts:

- Sustainability - requires funding matched to population growth, health needs and real cost drivers, as well as effective measurements to monitor and track spending.
- Integration - to overcome the myriad of health programs at the federal, provincial and municipal levels that have led to devastating gaps in the provision of health services to First Nations.

The elements of the First Nations Health Action Plan are:

1. Sustainable Financial Base
2. Integrated Primary and Continuing Care
3. Health Human Resources
4. Public Health Infrastructure
5. Healing and Wellness
6. Information and Research Capacity

For more information, please see **Appendix 9.**

First Nations Continuing Care

The demand for institutional and related continuing care services for First Nations will grow rapidly over the next several decades due to increases in the number of First Nation members aged 55 and older. The 55-64 year age group will increase by 236% and the 65+ group by 229% in this period. Life expectancy of First Nations males will increase from 59.2 to about 72 years by 2010 and from 65.9 to 79 years for First Nations females. There will be 57,000 more First Nations members aged 65 and older in 2021.[12]

The increasing prevalence of chronic illnesses that limit independent living for First Nations community members will increase 16% (1996) to 27% in 2016 for diabetes. In addition, the First Nations population with disabilities resulting from injuries represent the highest rates of injured among all other racial groups in the country. The disability rate among young adults is almost three

[12] A First Nations Continuing Care Policy Framework – an Intergenerational Perspective by Katenies Research & Management Services November 2002.

times higher for Aboriginal peoples than for non-Aboriginal people. The 1999 First Nations and Inuit Regional Health Survey found that the prevalence of five chronic health conditions – diabetes, heart disease, hypertension, cancer and arthritis/rheumatism – among First Nations exceeds that of all Canadians in all major age-sex groups.[13]

Two key areas of concern that have been significantly overlooked in terms of care requirements are children with special needs and clients with mental health challenges. Children's issues remain challenging to formal and informal caregivers. In some cases, children's health conditions deteriorate as they age and eventually these children will require higher levels of care. Another area of concern is the need for specialized care for clients who have suffered permanent brain injury as a result of trauma (accidents / assaults) or following long term substance abuse (alcohol / drugs). Along with trauma induced brain injury, there is notably an increase in clients presenting at the community diagnosed with mental health conditions such as schizophrenia. This presents challenges to caregivers at the community level. Most First Nations communities have no existing facilities and limited funding, yet they are expected to respond to the specialized needs of diverse population groups, including children.

In situations involving clients with mental health challenges, there is a recognized need at the community level for holistic care. Unfortunately, many First Nations suffering from the effects of fetal alcohol spectrum disorders or other mental health conditions are housed in correctional facilities.

Provincial health care reform along with changes in the delivery of mental health services has resulted in First Nations clients' health being placed at risk and clients' inability to access necessary services to stabilize their health. There is a desperate need to address this situation and seek alternatives for these clients. It is noted that adult clients may have two or more prevalent health conditions that further compromise their health. One size will not fit all and there is a need for flexibility in the design of continuing care facilities to meet the multiple challenges of First Nation clients.

Provincial health reforms that occurred across the country throughout the 1990s have had a severe impact on First Nations health services and systems. With the significant cutbacks in hospital and in-patient services, shorter hospital stays and the general deinstitutionalization of both acute and long term care clients, First Nations were being discharged from hospital earlier and were being sent back to their communities where care and services were limited and sometimes altogether absent.

[13] T. Kue Young et al "Chronic Diseases" Chapter 3, First Nations and Inuit Regional Health Survey National Report, 1999

The First Nations and Inuit Home and Community Care (FNIHCC) program which was launched by Health Canada in late 1999, did address some of the more significant gaps in services. The program is currently funded at $90M and provides various health-related home care services such as case management, nursing care, in-home respite care and personal care.

As of September 2003, the vast majority of eligible communities (96%) were being funded by FNIHCC, while 78% of the eligible communities and 88% of the eligible population had access to full service delivery. In small and remote communities, however, even the essential services are minimal due to lack of funds. In addition, there is some indication that the essential service elements are not always those that respond to the identified needs of the communities. The main ongoing gaps are perceived to be palliative care, rehabilitative care, respite care and mental health services. It is important to note that the FNIHCC program specifically excludes the construction of institutional long term care facilities and the delivery of institutional long term care services.[14]

The Assisted Living/Adult Care program managed and funded by Indian and Northern Affairs Canada (INAC) also provides social and support services to First Nations living in reserve communities or settlements who are elderly or have a disability. The program consists of in home care which provides homemaker services, foster care and institutional care limited to types I and II care of a non-medical nature. Type I is institutional care for individuals requiring only limited supervision and assistance with daily living activities. Type II is extended care for individuals requiring some personal care on a 24 hour basis and those under medical or nursing supervision. However, the current policies, procedures, and limitations of care within the INAC program exclude specialized care needs of other population groups.

There are a total of 633 First Nations communities across Canada and only 30 communities currently have a personal care home. INAC placed a moratorium on the construction of new care facilities in the late 1980s which has since been lifted and replaced with very restrictive terms for approval of new facilities.

Therefore, the AFN has developed an *Action Plan for Continuing Care*, based on the following vision: To provide a holistic continuum of continuing care services ranging from home support to higher levels of care, under First Nations control. Reflecting the unique health and social needs of First Nations, services are comprehensive, culturally-appropriate, accessible, effective and equal to those accessed by Canadian citizens.

We would make the following recommendations regarding continuing care:

[14] First Nations and Inuit Home & Community Care Program – Study 1 Implementation, prepared by Prairie Research Associates Inc., July 2004.

- Federal investments are required to provide higher levels of continuing care in First Nations communities;
- There needs to be a holistic health system framework that focuses on community driven models based on health needs;
- There needs to be an effective, efficient, sustainable, responsive, culturally-sensitive and accountable First Nations governance structure under which a health system would operate; and
- Elders/Traditional Healers need to be included in the provision of health services to ensure a complementary balance of western scientific approaches and traditional knowledge.

The *First Nations Continuing Care Action Plan* is premised on three key concepts:

- Sustainable Funding - matched to the population growth, health needs and real cost drivers as well as effective measures to monitor and track spending;
- Flexibility in program design - to meet the diverse needs of First Nations communities; and
- Coordination towards a holistic approach - to ensure an effective and efficient program.

For more information, please see Appendix 10

Health Research and Information Action Plan

The Royal Commission on Aboriginal Peoples (RCAP) recognized the critical link between self-determination and control over information. As such, a critical component of the RCAP Report was the development of Ethical Guidelines for Research. These guidelines served to increase awareness concerning the unique research needs of First Nations, Inuit and Métis Peoples, and were one of the first set of national standards for Research Ethics specific to these groups.

The First Nations principles of Ownership, Control, Access and Possession (OCAP) have been the primary mechanism for First Nations to assert self-determination in research and data collection activities. No longer solely the subject of research projects, First Nations are researchers, data stewards, privacy advocates, and ethics advisors in all stages of research and data collection processes.

The only national First Nations-controlled research initiative – the First Nations Regional Longitudinal Health Survey (RHS) – has been highly successful, achieving an 82% participation rate across ten regions with more than 20,000 individuals living on-reserve in its second phase. A data sharing agreement has been signed between First Nations and Health Canada.

This survey is in its second iteration and has been designed longitudinally to serve as the foundation for First Nations health research in Canada. It is overseen by the First Nations Information Governance Committee (FNIGC) mandated by the Chiefs Committee on Health, with strict adherence to the OCAP principles. The RHS is internationally recognized for its ties to First Nations self-determination.

The AFN has developed the *First Nations Health Research and Information Action Plan* in order to support First Nations Peoples and organizations in accessing the resources, technology, infrastructure and capacity required to advance First Nations self-determination in research and information management – in order to improve the health and well-being of First Nations Peoples.

First Nations health information and research initiatives, with options for strategic linkages with federal, provincial, territorial and other entities, will be essential to addressing systemic inequities in health status and access to quality care, at the level of individuals, communities and nation.

In order to advance this vision, meaningful participation of First Nations is immediately required in all Canadian, provincial/territorial and non-governmental information and research initiatives that have an impact on First Nations. Equitable access to funding, technology and communications must be offered to First Nations on a sustainable and flexible basis.

The AFN Health Research and Information Action Plan provides a comprehensive plan to achieve transformative change in the longer term, as well as immediate support to strengthening First Nations' role in health research and information. The elements of the AFN Health Research and Information Action Plan are:

1. Respect for OCAP Principles and First Nations Research Ethics;
2. First Nations-controlled Health Research and Information Institutions (National, Regional, Treaty, Tribal, Community);
3. Sustainable Funding;
4. RHS Infrastructure;
5. Flexible and Scalable Technology Applications;
6. Broadband Connectivity;
7. Training/Capacity Development
8. First Nations Health Reporting Framework

For more information, please see **Appendix 11.**

Non-Insured Health Benefits

The Non-Insured Health Benefits (NIHB) Program is Health Canada's national, needs-based health benefit program that funds benefit claims for a specified range of drugs, dental care, vision care, medical supplies and equipment, short-term crisis intervention mental health counseling, and medical transportation for eligible First Nations people and Inuit.[15] The NIHB program is likely the most visible and frequently accessed program by First Nations clients in need of health care. It represents close to half of Health Canada's total expenditures in First Nations and Inuit health. NIHB emanates from First Nations' Treaty and Inherent Rights to Health, and results from the federal fiduciary obligation.

The Supreme Court of Canada in *Marshall*[16] affirmed that the terms of a treaty are not limited to the text of the Treaty document, but include the actual agreements reached between the parties. Furthermore, the Supreme Court of Canada, beginning with the *Guerin* case and in subsequent cases since, has held that there is a fiduciary duty owed by the Crown to Aboriginal peoples arising from the historical relationship between the two parties.[17] Despite Supreme Court decisions, the Crown has consistently disputed recognition of treaty rights to health or health care,[18] except for certain specific treaties, and the scope and content of the fiduciary duty.

In 2004-05, the AFN completed an independent assessment of the NIHB Program to retrospectively analyze expenditure and utilization trends for the time period 2000/01 to 2003/04, to study the impact of various cost drivers and to examine policy, service delivery and other administrative issues by conducting informant interviews.

Presently, increases in NIHB Program funding levels are limited to an estimated annual population growth rate, and do not take into account health needs and cost drivers. Provincial health reforms impact the Program. For instance, hospital closures raise the demand for medical transportation, and shortened lengths of stay in hospitals result in higher utilization of medical supplies and equipment (MS&E) and prescription benefits. In the AFN's retrospective analysis of NIHB expenditures and utilization trends (2000/01-2003/04), the largest component of growth can be attributed to pharmacy benefits which accounts for over a third of the program's expenditures. Pharmacy expenditures increased annually, on average, by 12.6%, including 16.4% growth

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[15] Health Canada, *Non-Insured Health Benefits* 2006. Available at: http://www.hc-sc.gc.ca/fnih-spni/nihb-ssna/index_e.html

[16] *R. v. Marshall*, [1999] 3 S.C.R. 533, 1999 CanLII 666 (S.C.C.).

[17] Nadjiwan Law Office Barristers and Solicitors *Impact of Health Transfer Agreements*. March 14, 2005.

[18] Boyer, Y. Discussion Paper Series in Aboriginal Health: Aboriginal Health, No. 2, Native Law Centre, 2004, p. 32.

in over the counter (OTC) medications and 14.7% growth in prescriptions. Premiums (17.6%), mental health (7.3%) and dental (5.6%) benefits also showed healthy gains.

The main cost drivers and escalators include the following: aging; population; utilization; inflation; health status and health reform; medical advances; policy-induced changes; and benefit areas other than pharmacy and dental.

The AFN has developed a *First Nations Action Plan for Non-Insured Health Benefits*, which is aimed at ensuring that First Nations can access services based on their needs and as per their Treaty and Inherent Rights to Health, and Crown's fiduciary duty. Access must be sustainable and flexible, and must be founded on a community health approach.

Improved access to NIHB is essential to addressing systemic inequities between First Nations and Canadians in health status and access to quality care, at individual, community and Nation levels. In order to advance this vision, meaningful participation of First Nations is required in all NIHB related activities of the First Nations and Inuit Health Branch, Health Canada.

The *First Nations Action Plan on NIHB* provides a comprehensive plan to achieve transformative change in the longer term, as well as immediate support to improve First Nations' access to quality NIHB services. The Action Plan is premised on three key concepts:

- Meeting the Health Needs of First Nations through Timely, Quality Care;
- Fostering Reciprocal Accountability; and
- Adopting a Community Health Approach.

For more detail on the Action Plan as well as the expenditure projections, Please see **Appendix 12**.

2.8. Article 13 Right to Education

The current state of First Nations education is unacceptable. Of the almost 120,000 on-reserve Kindergarten to Grade 12 (K-12) students recorded by Indian and Northern Affairs Canada (INAC) in 2001-02, only 32 percent are graduating from Grades 12-13. This results in 68 percent of the school-aged population having less than a high school education. The results are similar for First Nation students attending provincial schools.

The higher rate of population growth in First Nation communities has created an associated demand for increased services like education. For example, 40 percent of Canada's Registered Indian population is under the age of 19, while

the same figure for the rest of Canada is only 25 percent (Auditor General 2004).

While First Nations in Canada are facing numerous challenges, it has long been recognized that significant change will not occur without meaningful progress towards the implementation of First Nations education systems. First Nations know the problems faced in their communities and in urban centres. Recent research shows that the best and most lasting solutions are developed when First Nations are the ones creating them.

First Nations education is a life long learning process that begins in the cradle and continues through to old age. First Nations women and elders play a central role as the transmitters of their culture to the younger generations. Enhanced education outcomes for all First Nation learners requires the recognition of First Nations jurisdiction over education at all levels, and the provision of adequate long-term and sustainable funding arrangements. First Nations education must be grounded in First Nations languages and cultural values, and must be properly funded so that education outcomes meet or exceed those of the general Canadian population.

The Assembly of First Nations (AFN) has long advocated for First Nations control over First Nations education. In 1972, the AFN[19] released its first comprehensive policy statement on education with the publication of *Indian Control of Indian Education*. The themes that this document embodied remain relevant today, having been further developed and refined over more than three decades. The central thrust of these initiatives has consistently called for the recognition of First Nations jurisdiction over education.

There is a need to recognize First Nations jurisdiction as a central tenet of education reform. Since before the last century, formal education has been used by colonizing governments as a tool for the assimilation of First Nations Peoples. In 2004, Canada's Auditor General identified an education gap of 28 years between First Nations Peoples living on reserve and the Canadian population as a whole, and she indicated that this gap was increasing. Even more significant, there is growing evidence to support the premise that all reform – whether in education or elsewhere – must be based on Indigenous peoples' control over their own institutions in order for reforms to be effective (Cornell and Kalt 2001; Chandler and Lalonde 1998).

There are other compelling reasons to take action: the First Nations population is burgeoning, young, diverse and mobile; and the First Nations population is a potential resource to address labour shortages in Canada. This potential can be realized only if First Nations increase their participation in the labour market, become successful in starting their own businesses, and strengthen their

[19] The AFN was formerly known as the National Indian Brotherhood (NIB).

employability skills. This is an opportunity for Canada to reach out to the workforce of tomorrow, the entrepreneurs, the artists, the business leaders and bankers. Canada's population is aging but the First Nations population is coming of age. Our future is Canada's future.

In order to address these issues, the AFN has developed a *First Nations Education Action Plan* that envisions the development and implementation of sustainable education systems under the full control and jurisdiction of First Nations based on the recognition of inherent Aboriginal and treaty rights, and under international law.

First Nations Peoples live and work in a knowledge-based society and economy that requires them to be adaptable and resilient lifelong learners. To prepare First Nations for the realities of the 21st century, fundamental changes to First Nations education must become a priority. This includes the recognition of First Nations jurisdiction over education at all levels: from Early Childhood Development (ECD) through to Post-Secondary Education (PSE), including skills development and adult education. To do so means that the Government of Canada must commit to the funding of First Nations education to the degree that the educational gap is rapidly closed and educational outcomes meet and exceed those of the general Canadian population. This funding must take into account the unique factors affecting First Nation peoples including:

- Education that embodies and supports the strengthening of a First Nation's identity through an emphasis on language, cultural and traditional knowledge, and the effective reincorporation of First Nation elders and women in educating younger generations;
- Adequate and sustainable investment in education as a key to the successful development of vibrant First Nations governments and economies; and
- A First Nations education infrastructure that meets the needs of First Nations Peoples and communities on a lifelong learning continuum that includes ECD, K-12, PSE and all forms of skills development and adult learning.

The AFN calls upon the federal government to fulfill its commitment to First Nations by ensuring that First Nations communities are adequately funded and have the jurisdiction necessary to develop and implement the educational systems that meet First Nations' goals and aspirations. This requires a commitment both to lifelong learning from ECD to PSE and beyond. The federal government must therefore support First Nations education, skills development and training as a tool for nation building, and must address immediate challenges facing First Nations in other areas that directly affect First Nations educational outcomes and quality of life, such as housing, clean drinking water, infrastructure, environment, and child welfare. The status quo is

unacceptable to all concerned, and bold, meaningful steps need to be taken to implement a transformative solution to the current situation.

The *First Nations Education Action Plan* provides a plan to address immediate shortfalls in the near term, and to achieve transformative change in the long term. To achieve the vision of First Nations controlled education, the First Nations Education Action Plan is premised on two key concepts:

- Jurisdiction
- Sustainability

These concepts are central to any changes that take place and must incorporate the critical interests of First Nations women, urban and youth populations.

The First Nations education sector requires immediate strengthening and stabilization, as well as positive transformative change. The First Nations Action Plan on Education is designed to equip the AFN to secure the political, policy and financial commitments necessary to advance a First Nations vision on education. To do so, the AFN is advancing the following key elements as the basis for long term meaningful change to First Nations education:

1. Implementation of First Nations Education Systems
2. New Funding Based on Real Cost Drivers
3. Information & Research Capacity
4. Coordination & Interface of a New Approach

These elements are premised on empowering First Nations communities to take control of their education. Where the AFN advocates for the recognition of First Nations jurisdiction over education at a national level, the negotiation of what this will mean must take place at the community and regional levels. Similarly, where the AFN lobbies nationally for the allocation of funds that are adequate and sustainable, how these funds are used by communities and regions must be determined at that level. First Nations education must be developed from the community up. In order to be meaningful and relevant, education solutions must be developed by communities. The AFN's role involves supporting First Nation communities and regions through the coordination of national policy development initiatives, and by advocating on behalf of First Nations in the national context.

For more information, please see **Appendix 13.**