Indian Act Sex Discrimination Working Group

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Submission to the

United Nations Committee on the Elimination of Discrimination against Women

for the

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Executive Summary

The Indian Act Sex Discrimination Working Group (the Working Group) thanks the CEDAW Committee for its attention to the ongoing issue of sex discrimination in the Indian Act and wishes to highlight ten points regarding this decades-old discrimination.

Since 1876, the Indian Act has discriminated against First Nations women and their descendants, discrimination that continues today. As a result, thousands of women and their descendants have been denied 'Indian status' and denied the many economic, social, and political benefits that go with legal recognition. Since 1981 UN bodies have repeatedly recommended that Canada eliminate sex discrimination from the Indian Act. These recommendations have not been heeded.

In 1981, 2019, and 2022, United Nations treaty bodies (the UN Human Rights Committee and CEDAW) issued decisions on the petitions of Sandra Lovelace, Sharon McIvor, and Jeremy Matson. All three petitions found Canada in violation of its treaty obligations. Canada has failed to fully implement the remedies recommended in all three

petitions. Canada has flatly rejected the finding of the CEDAW Committee in Matson v. Canada that there is continuing sex discrimination in the Indian Act that affects women and their descendants, including Jeremy Matson and his children.

In 2015, 2016, and 2019, the Inter-American Commission on Human Rights, the CEDAW Committee, and the National Inquiry on Missing and Murdered Indigenous Women and Girls issued reports, after in-depth investigations, that identified Indian Act sex discrimination as a root cause of the crisis of murders and disappearances of Indigenous women in Canada. The National Inquiry found that Canada is engaged in a slow-moving genocide of Indigenous peoples, in which women have been targeted. Five years after the National Inquiry issued its report, only 2 of its 231 Calls for Justice have been implemented, and only 50 per cent have been started on. The recommendations of all three expert inquiries - that Canada eliminate sex discrimination from the Indian Act – have not been implemented.

In 2019, Canada brought into force a provision of Bill S-3 (its 2017 amendment to the Indian Act) that eliminated the core of the sex discrimination that had been in place from 1869 to 1985, reflecting the finding of the UN Human Rights Committee in McIvor and Grismer v. Canada. At the time, the Government of Canada estimated this change to the Indian Act would make between 270,000 and 450,000 women and their descendants eligible for Indian status that had been denied to them because of sex discrimination. However, in June 2024, 5 years later, only 55,804 individuals have been registered. Until the women and their descendants are actually registered, they do not have status or enjoy its benefits.

In 2022, the Senate Standing Committee on Aboriginal Peoples issued its report, Make it Stop! Ending the remaining discrimination in Indian registration . The Senate Committee's ground-breaking report identifies key problems in the Indian Act registration system, including insufficient resources, long delays, and inadequate provision of information to those who are eligible to register. It contains nine recommendations for ending discrimination in status registration. Canada has not implemented these recommendations, and has no plan for doing so.

In 2022, the Government of Canada introduced another Bill to amend the Indian Act, Bill C-38. Bill C-38 is a legislative fix for the discriminatory removal of status from the wives and children of men who enfranchised, whether voluntarily or involuntarily. It was introduced by the Government of Canada to address a court challenge that Canada was clearly going to lose. The introduction of a new amendment to the Indian Act provides an opportunity for a comprehensive fix for the outstanding issues of sex discrimination, but the Government of Canada refuses to include provisions that would do so. This means that, when Bill C-38 is passed, Canada will enact one more legislative amendment to the Indian Act that addresses only a sliver of the remaining discrimination and does not fully correct the decades of sex, race, and family-based discrimination.

In 2016 Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples, and in 2021 Canada passed the United Nations Declaration on the Rights of Indigenous Peoples Act, which requires Canada to ensure that its laws and policies are consistent with UNDRIP. In 2023 Canada released its Plan for implementing the UNDRIP Act. Despite the fact that Indian Act sex discrimination violates a number of Articles of UNDRIP, the Plan does not include measures that will fully eliminate sex discrimination from the Indian Act.

In 2024, it is apparent that Canada's legislated sex discrimination has not only denied First Nations women and their descendants their right to equality and their right to culture, it has also been an effective tool of forced assimilation. Since its inception, the Indian Act has defined thousands of First Nations women and their descendants as non-Indians and forced them into the non-Indigenous population. By doing so, it has stripped First Nations of thousands of members, shrinking the pool of Indians who are recognized as having inherent, Aboriginal, treaty and land rights, and to whom the government owes a fiduciary duty. Article 8 of UNDRIP sets out the right of Indigenous Peoples to reparations for any form of forced population transfer. But Canada's plan for implementing the UNDRIP Act does not include recognition of the comprehensive steps that must be taken to repair the harms of Indian Act discrimination, and to provide reparations.

In February 2025 First Nations, including women and their descendants, are heading into a consultation on the second generation cut off and Section 10. voting thresholds of the Indian Act. The second generation cut off is the requirement that there be two Indian parents to transmit status to a child, also known as the "two-parent rule". This

genocidal policy maintains Canada's post-1985 plan for the legal extinction of status Indians. Everyone – demographers, legal experts, and the Government of Canada – agrees that these rules will make status Indians legally extinct in three or four generations. Because of rates of out-parenting under the current policy, the numbers of those who are legally eligible for Indian status is diminishing rapidly. 'Indians' will become legally extinct.

While Canada has now recognized that it must find a solution to this looming legal extinction, and is preparing to consult First Nations about the second generation cut off, there is no guarantee that the consultation outcomes will remedy the discrimination that First Nations women and their descendants still face, precisely because the Government of Canada denies that these rules, among other harms, perpetuate discrimination against women and their descendants. Canada refuses to acknowledge the continuing reality of sex discrimination and the broad, continuing, harm it causes.

Unless Canada implements a comprehensive plan to restore status, entitlements, and membership to women and their descendants who lost them because of sex discrimination, abolishes the second-generation cut off, and provides reparations to women, their descendants, and their Nations, the colonial policy of assimilation will be successful, despite Canada's rhetorical commitments to truth, reconciliation, and the human rights of Indigenous peoples.

Recommendations

Introduction

The Indian Act Sex Discrimination Working Group

The Indian Act Sex Discrimination Working Group (the Working Group) is convened and supported by the Canadian Feminist Alliance for International Action (FAFIA). The Working Group is composed of the leading plaintiffs in the court and UN petitions that have challenged Indian Act sex discrimination, Canada's top legal experts on this sex discrimination, and leaders from two of Canada's largest Indigenous women's organizations - the Ontario Native Women's Association and the Quebec Native Women's Association – as well as the Union of B.C. Indian Chiefs, and FAFIA. The Working Group advocates for the fulfillment of the rights of First Nations women, for an end to the sex discrimination in the Indian Act, and for repair of all its harms.

History of sex discrimination in the Indian Act

Since its inception in 1876, the Indian Act has defined who is an 'Indian,' entitled to recognition by Canada, and owed fiduciary duties. The Indian Act has accorded privilege to male Indians and their descendants and treated female Indians and their descendants as non-persons, or second-class Indians. In the beginning, the Indian Act defined an Indian as: a male Indian, the wife of a male Indian, or the child of a male Indian. These persons had 'status' as an 'Indian' and were entitled to be registered and recognized as members of Indian Bands. Under successive versions of the Indian Act, for the most part, Indian women's status relied on their relationship to a father or husband. They had no independent status or ability to transmit status to their descendants. Prior to 1985, there had always been a one-parent rule for transmitting status and the transmitting parent was male. In contrast, Indian women lost status when they married a non-Indian, while Indian men endowed Indian status on their non-Indian wives. In other words, the Indian Act recognized only patrilineal descent and penalized Indigenous women, but not men, for 'marrying out.' While amendments to the Indian Act made in 1985, 2011 and 2017 corrected some elements of the discrimination, they also added new forms of discrimination, and all have failed to fully eliminate the discrimination.

This discrimination has had profoundly harmful effects on First Nations women, their descendants and their communities. This persistent discrimination has been identified by the CEDAW Committee and the Inter-American Commission on Human Rights (IACHR) as a root cause of the violence against Indigenous women and girls. The sex discrimination has been an effective tool of assimilation, defining thousands of First Nations women and their descendants as non-Indian, not entitled to recognition, belonging in their communities, political voice, or the benefits of treaties or inherent rights.

On August 15, 2019, the Government of Canada brought into force provisions through Bill S-3 that eliminated the core of the preferential treatment of men and their descendants that had been in place from 1869 to 1985. It was a big step forward. But not all of the sex discrimination in the Indian Act was eliminated, although the Government of Canada claims that there are now no sex-based inequities in the Indian Act. The Working Group submits that Canada

must act urgently to fully eliminate all remaining sex discrimination from the Indian Act, to dismantle the program of legislated forced assimilation, and repair the harms to Indigenous women, their descendants and their communities that have been caused by decades of sex discrimination.

Canada's failure to implement recommendations from UN bodies

Since 1981, UN treaty bodies and the UN Human Rights Council (HRC) have recommended repeatedly that Canada remove all sex discrimination from the Indian Act and repair the harms done to Indigenous women and their descendants.

Since 2003, the CEDAW Committee has issued concluding observations after every review of Canada calling for the elimination of this legislated sex discrimination. In 2022, the Committee issued its decision in Matson v. Canada directing Canada to eliminate the 1985 cut-off dates in the registration provisions and take all other measures necessary to provide registration to all matrilineal descendants and patrilineal descendants on an equal basis. Canada's response to Jeremy Matson's petition, an assertion that no sex-based inequities exist in the Indian Act, is an embarrassment to Canada's human rights record.

On January 11, 2019, the Human Rights Committee, ruling on the petition of Sharon McIvor and her son, Jacob Grismer, found that the Indian Act violates the rights of First Nations women to equal protection of the law and to equal enjoyment of their culture. The Committee stated that Canada is obliged to provide Ms. McIvor, and all those similarly situated, with full reparations, which include (a) ensuring registration to all those denied registration under 6(1)(a) (full status) of the 1985 Indian Act solely as a result of preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985 and to patrilineal descendants over matrilineal descendants, born prior to 17 April 1985; (b) taking steps to address residual discrimination within First Nations communities arising from the sex discrimination in the Indian Act, and c) taking steps to avoid similar violations in the future.

In its August 2022 Report on Follow up progress on individual communications the Human Rights Committee assessed Canada's response to its decision as only partially satisfactory. Canada has failed to show that it has satisfied three standards: a) inclusive interpretation of section 6 (1)(a) of the Indian Act of 1985; b) taking steps to address residual discrimination within First Nations; and c) non-repetition. The HRC asked Canada to report back by February 2023 on additional measures it has taken to satisfy these standards and provide a full and effective remedy for the discrimination. The Working Group does not know of any report that has been submitted.

In short, Canada has consistently failed to fully implement treaty body recommendations, and every time Canada states that it is removing the sex discrimination from the Indian Act, it does so in a piecemeal and incomplete fashion, thus perpetuating discrimination. Furthermore, there is no mechanism to monitor Canada's follow-up to concluding observations, UPR recommendations, decisions on petitions, or reports from mandate holders.

Now, in 2024, women and their descendants still face discrimination under the Indian Act. The Working Group submits that the outstanding issues are these:

the automatic removal of status from the wives and children of men who enfranchised, whether voluntarily or involuntarily;

the automatic transfer of women from their natal bands to their husbands' bands;

the loss of band membership by women and their descendants who lost or were denied status;

the discriminatory effects of the second generation cut off, 6(2) status ("half status") and the two-parent rule on women and their descendants;

the effect of earlier sex discrimination on following generations due to differentiation in status eligibility for those with pre and post 1985 birth and marriage dates;

the bar to compensation for harms caused by sex discrimination in the Indian Act and the consequent failure to provide reparations to women and their descendants, including restoration to band membership, compensation for lost benefits, services, and entitlements, apology, and memorialization; and

the failure to register, and therefore actually grant status to, thousands of women and their descendants who have gained, or regained, entitlement to status through amendments to the Indian Act in Bill C-31 (1985), Bill C-3 (2011), and Bill S-3 (2017), and particularly through the '6(1)(a) all the way' amendment to Bill S-3 that was brought into force in August 2019.

This submission addresses these issues under the following headings: 1) Registration Issues, 2) Outstanding Law Reform Issues, 3) Reparations and Restoration, and 4) Legal Extinction Plan.

Registration Issues

In its announcement of August 15, 2019, the Government of Canada estimated that removing the sex discrimination from the Indian Act would newly entitle between 270,000 and 450,000 First Nations women and their descendants to Indian status.

CEDAW has requested, in light of Bill S-3 amendments and these newly entitled individuals, that Canada "provide information on how the Government intends to ensure the timely registration of status for all applicants and clarify the resources that have been allocated for the implementation of the law."

As of June 17, 2024, the number of newly registered individuals under Bill S-3 was 55,804. While Indigenous Services Canada (ISC) reports that the registration process has improved, the Working Group remains concerned with how long the process of registration takes (six months to two years) and thus how long individuals continue to be denied their rights; the lack of adequate resources to effectively deal with registration; the lack of adequate assistance for applicants; and the lack of appropriate information dissemination to those individuals who might be eligible to register if they only knew.

Unless the women and their descendants are registered, the changes to the law that came in 2011, 2017, and 2019 are without meaning. Registration is fundamental to women and to their descendants for accessing rights and entitlements, including treaty payments, and for many, opens the door to regain lost culture, voice, and belonging. There is still no effective plan in place to ensure that women and their descendants know about their new entitlements, and to handle increased applications.

In June 2022, the Standing Senate Committee on Aboriginal Peoples released a report entitled Make it Stop! Ending the remaining discrimination in Indian registration, including nine comprehensive recommendations.

Regarding the registration process, the Senate Committee made recommendations that the Government of Canada simplify the process, give additional assistance to applicants, establish an effective public awareness campaign, set a ten-day service standard, and establish an independent registration review panel. In addition, the Senate Committee recommended that there be oversight of the registration process, and a study led by the Office of the Auditor General of Canada. To date, no action has been taken on these recommendations.

Actually getting the women and their descendants registered remains a key issue. It is registration that makes any legislative reform meaningful.

Outstanding Law Reform Issues

In 2022, the Government of Canada introduced a new amendment to the Indian Act, Bill C-38. Unfortunately, Bill C-38 continues Canada's piecemeal approach to eliminating discrimination from the Indian Act. Bill C-38 will address some outstanding issues of sex discrimination, but not all.

The Working Group supports what is in the proposed legislation, namely, provisions addressing sex discrimination and loss of status because of voluntary and involuntary enfranchisement, and a new legal mechanism to facilitate reconnection with their natal Bands for women who were involuntarily transferred to their husbands' Bands because of the patriarchal structure and operation of the Indian Act.

However, this legislative fix is incomplete. The Working Group strongly objects to the introduction of one more legislative amendment that does not address all the remaining discrimination in the Indian Act. The Indian Act was amended in 1985, 2011 and 2017, each time with the claim that the amendment eliminated sex discrimination from the Act. Each time, the claim was proven false.

What Is Missing from the Proposed Amendment to the Indian Act

Removal of the bar to compensation for discrimination

The proposed amendment does not remove the legal bars to compensation for First Nations women and their descendants for the harms caused by the sex discrimination in the Indian Act.

The Senate Committee on Aboriginal Peoples in its June 2022 report recommended that "the Government of Canada…repeal section 22 of An Act to Amend the Indian Act (1985); section 9 of the Gender Equity in Indian Registration Act (2010); and sections 10 and 10.1 of An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général) (2017) to enable First Nations women and their descendants to access compensation."

The Senate Committee explained: "The committee agrees with witnesses that reparations, including compensation and a formal apology, are essential to recognize the harms experienced by First Nations women and their descendants as a result of discrimination in the registration provisions under the Indian Act. Reparations are a fundamental part of reconciliation, providing the opportunity for Indigenous women and their children to heal, and for all Canadians to learn about this ongoing injustice in our shared history. …[T]he committee believes that non-liability clauses must be repealed to enable First Nations women and their descendants to access compensation."

The bar to compensation, first introduced in 1985, constitutes blatant sex discrimination, contrary to CEDAW and s. 15, the equality provision of the Canadian Charter of Rights and Freedoms. It is particularly egregious in light of compensation that has been offered to Indigenous peoples for other harms caused by colonial laws, policies and practices. These include:

Inuit compensation for forced relocations - $50M; Inuit compensation for dog slaughter - $20M; Indian residential school settlement - $3.23B; Indian day school settlement - $1.27B; 60's scoop settlement - $750M; First Nations child welfare settlement - $40B; First Nations drinking water settlement - $8B; First Nations flooding settlements (nationwide) - $45M - $90M; Robinson-Huron treaty annuity settlement – $10B; Robinson-Superior treaty annuity litigation – up to $126B.

The bars to compensation also contravene the right of Indian women and their descendants to redress for forced assimilation, which they are guaranteed in Article 8(2)(d) of UNDRIP.

The Working Group notes that General Recommendation No. 39 (2022), states: "The Committee acknowledges that indigenous women and girls have suffered and continue to suffer from forced assimilation policies and other large-scale human rights violations, which may in certain instances amount to genocide. It is critical for States parties to address the consequences of historic injustices and to provide support and reparations to the affected communities as part of reconciliation and the process of building societies free from discrimination against indigenous women and girls."

The Working Group has repeatedly recommended that this bar to compensation be removed, and that First Nations women and their descendants be compensated for the harms of sex discrimination, including the harm that not treating them as equal parents, able to transmit status on an equal footing with their male counterparts, has done to women in their role as principal conveyors of culture and language.

Removal of 6(1)(f), 6(2), the second generation cut-off, and the two-parent rule

The proposed amendment does not remove Section 6(2), the second generation cut off and the two-parent rule that were introduced to the Indian Act in 1985. Section 6(2) provides that someone who has only one status parent will get status for their lifetime. However, the 6(2) person has to have children with another status person in order to ensure that their children have status. If a 6(2) person has a child with a non-status person that child will not be entitled to status under the Indian Act. This is called the 'second generation cut off.'

Instead of removing the discrimination against women by permitting women to transmit status as one parent as men had been able to do since 1876, Bill C-31 introduced a two-parent rule for the transmission of status for both women and men.

As Claudette Dumont-Smith reported to the Minister for Crown-Indigenous Relations in 2017 regarding her consultations on Indian Act discrimination issues "the inequity of greatest concern that was raised throughout the collaborative process was the second generation cut-off. The effect of this inequity is felt in the community and amongst families where some family members are registered and others [are] ineligible in spite of recent legislative changes through Bill S-3."

The second generation cut off and the two-parent rule perpetuate discrimination against women in three ways, outlined here.

They Penalize Women if the Father of their Child is Unknown or Unnamed

Until 1985, an Indian woman had the independent right to transmit status to her child in just one situation – where the state could not prove that the father was non-status. Under that old provision, the onus was on the government and its agents to show that the father was not an Indian. However, in 1985, the onus was reversed. Since then, the mother has – by way of ISC policy – the onus of establishing that the father of the child is a status person in order for the child to have status.

This is sexist and problematic. Who is a child's mother is usually readily apparent. Who is the father is not always apparent. Whether the father acknowledges his paternity and thus can be "counted" as the second status parent for purposes of eligibility for status is essentially his decision. The provision thus perpetuates the patriarchal and privileged role of the father in conferring status which was a feature of the Indian Act before 1985, albeit in a new way.

Moreover, there are some cases where it is not desirable or possible to name the father. A child may be born of incest, and putting that on the birth certificate or status application will have negative effects on both the child and the mother. The father of the child may be unknown, as in cases of rape or gang rape.

Where the father of the child is unnamed or unknown, the 'Gehl provision' introduced in 2017 in Bill S-3 allows the mother to bring forward such evidence as she can to establish the father's Indian status, and the Registrar must give that evidence a reasonable interpretation. The father need not be named. However, if she does not have that evidence, and if she has 6(2) status herself, the child will not receive Indian status.

They Carry Forward the Original Sex Discrimination

The 1985 amendment, Bill C-31, preserved the old advantages of Indian men by providing that the non-status – often non-Indigenous – women whom they married and endowed with status before 1985 would henceforth be able to pass status on to a child, something they could not do before 1985.

In this way, a whole population of eligible two-parent status families came into being in 1985. By contrast, the non-status men who had married status women, and cost them their status, were not given status, so the women restored to status were left out of the privileged circle of families with two status parents. It is thus more likely that the children of families led by status women will become 6(2)s before the children of families led by status men. The new rules simply perpetuate the old discrimination against the female line under a new guise.

Pre and Post 1985 Birth and Marriage Dates

In some families, siblings with the same birth parents, have full section 6(1)(a) status or no status depending on whether they were born before or after April 17, 1985. Similar anomalies arise because of the date of marriage of the parents, whether before or after April 17, 1985. This '1985 cut off' was found to be discriminatory by CEDAW in its ruling in Matson v. Canada. CEDAW Committee member, Ms. Corinne Dettmeijer-Vermeulen, in testimony before the Senate Committee on Aboriginal Peoples in May 2022 regarding the CEDAW Committee's decision, stated that "even if not currently based on the gender of the descendants themselves, it perpetuates in practice the differential treatment of descendants of previously disenfranchised Indigenous women." The CEDAW Committee directed Canada to "[a]mend its legislation… to address fully the adverse effects of the historical gender inequality in the Indian Act ….including by eliminating cut-off dates in the registration provisions and taking all other measures necessary to provide registration to all matrilineal descendants on an equal basis to patrilineal descendants." The 1985 cut-off date also causes discrimination on the basis of age, family and marital status.

The Canadian Human Rights Commission has encouraged Canada to take the CEDAW ruling into account in its new amendment to the Indian Act. The Senate Committee found that "as with the second generation cut-off, this matter must be urgently addressed by the Government of Canada to ensure equality in the registration provisions."

The Working Group has urged the Government of Canada to eliminate this discrimination by establishing a one parent rule for transmission for both male and female parents. This is what should have been done in 1985 to correct the decades of discrimination against the women and to put them on the same footing as their male counterparts. The 2019 '6(1)(a) all the way' amendment that was so hard fought for by First Nations women, their allies and the Senate of Canada, and which reflects the decision of the UN Human Rights Committee in McIvor and Grismer v. Canada essentially established a one parent rule for women and men from 1869 to 1985. However, it did not correct the post-1985 discrimination caused by the Government of Canada's imposition for the first time of a two-parent rule. Instating a one parent rule for both male and female parents from 1985 onwards is what should have been done in 1985, and in subsequent amendments. But it was not. It should be done now, as this would address the sex, age and marital status discrimination, including the discrimination against women when the father of her child is unknown or cannot be named.

Reparations and Restoration

The Senate Committee's report highlights the importance of reparations in Recommendations 7 and 8 and yet Canada has not taken action on either of these, despite their stated commitments to truth and reconciliation, and their legislated commitment to the implementation of UNDRIP which affirms in Article 8, that States shall provide effective redress for any form of forced assimilation or integration. The cases of two First Nations individuals and their descendants, McIvor and Matson, have been received by the UN system and highlight this important issue of redress and restoration.

McIvor Petition

Because the 2010 amendment to the Indian Act, Bill C-3, did not fully remedy the sex discrimination challenged by Sharon McIvor in her court case, she and her son, Jacob Grismer, filed a petition with the HRC, claiming that the Indian Act continued to discriminate based on sex in violation of the International Covenant on Civil and Political Rights. As noted above, in 2019, the HRC upheld Sharon McIvor's claim that the Indian Act violates the rights of First Nations women to equal protection of the law and to equal enjoyment of their culture guaranteed by the ICCPR, and in its August 2022 Report on Follow up progress on individual communications, the Human Rights Committee assessed Canada's response to its decision in McIvor v. Canada as only partially satisfactory.

Full reparation would include registration of all those who are newly entitled to status by Bill S-3, compensation, apology, and education on the issue of sex discrimination in the Indian Act. But Crown Indigenous Relations informed the Working Group in 2020 that: "We do not currently have a mandate to negotiate on this matter." In other words, the Government of Canada has not authorized representatives to provide the remedy directed by the Human Rights Committee. Canada's response to its obligations under international law is wholly inadequate, especially considering Canada's commitment to make Canadian law consistent with UNDRIP.

Reparations are an essential element for the effective implementation of CEDAW and UNDRIP, and are a means of "addressing colonization and its long-term effects and of overcoming challenges with deep historical roots." The women and their descendants who have been prevented from enjoying and exercising their rights as registered First Nations individuals have waited over 100 years to be recognized, it is past time for this discrimination to be addressed through compensation, apology, memorialization, and public education about Canada's persistent denial of rights and its ongoing impacts. Importantly, as noted by EMRIP in its 2019 study on the subject of reparations, that "while apologies and other measures of satisfaction are to be commended, they should translate into tangible changes in terms of respect for and protection of the rights of indigenous peoples."

Matson v. Canada

The Working Group is gravely concerned by Canada's rejection of the Committee's findings and continued failure to address the reparation claim of Mr. Jeremy Matson, in line with the views adopted by the CEDAW Committee under article 7 (3) of the Optional Protocol (concerning communication No. 68/2014), and the joint communication of

several special rapporteurs in October 2023, on this same issue (ALCAN/3/2023).

CEDAW concluded that the Indian Act continues to perpetuate “the differential treatment of descendants of previously disenfranchised indigenous women, which constitutes transgenerational discrimination.”

On October 27, 2023, several Special Rapporteurs issued a communication (ALCAN/3/2023) concerning the sex-based discrimination against Indigenous women and their descendants under the Indian Act and failure to provide an effective remedy to victims of this discrimination, especially in light of Canada’s response to the Matson decision. Canada’s reply of November 30, 2023, is yet another example of the denial and delay of rights that Indigenous women and their descendants have experienced for generations.

Legal Extinction Plan

The second generation cut off and the two-parent rule amount to a legal extinction plan. They continue Canada’s program of forced assimilation by legally defining out of the pool of ‘Indians’ those with only one ‘Indian’ parent. Demographer Stewart Clatworthy predicts that in three or four generations over half of Indigenous individuals will not be entitled to status.

Claudette Dumont-Smith stated in her report: “This inequity will see the gradual elimination of persons eligible to be registered as an Indian with some communities feeling this impact in the next generation while most First Nation communities, regardless of location, will feel this impact within the next four generations. The end result, in the not-so-distant future, is that some communities will no longer have any registered Indians, or the number of registered Indians will have declined significantly.”

Continuation of the second generation cut-off and the two-parent rule will fulfill the genocidal intention of the Indian Act – getting rid of the “Indian problem” – through forced assimilation.

The Government of Canada is currently carrying out a consultation process on the second generation cut off. However, in order to consult communities, Bands, individuals, and organizations about the most effective ways to remove the legal extinction plan from the Indian Act, Canada must acknowledge the sex discrimination, and its history, as well as its current impacts. This is necessary to provide the relevant context for the consultation, and to ensure that consultation meets the goal of ending discrimination, and preventing it in the future. Canada’s refusal to acknowledge ongoing sex discrimination, as found by the CEDAW Committee in Matson, is a key concern of the Working Group entering this consultation.

It is notable that Canada’s justification for the introduction of the second generation cut off and the two parent rule in 1985 is that the women and their descendants, whom Canada dispossessed of their lands and expelled from their communities by legislated sex discrimination, would be a cultural and financial threat to their communities if they returned. As Canada has written in its response to the Committee’s decision in Matson:

The second-generation cut off was introduced in response to concerns raised by First Nations during parliamentary debates with respect to resource pressures and cultural erosion in First Nation communities. With the broader amendments to the Indian Act in 1985, First Nations expected a significant increase in registered individuals with no current familial, kinship or community ties. The rationale for the inclusion of this cut-off was an attempt to balance individual and collective rights.

In 2024, it is apparent that the legislated sex discrimination against First Nations women and their descendants has not only denied them their right to equality and their right to culture, it has also been an effective tool of forced assimilation. Since 1869 the Indian Act has defined thousands of Indigenous women and their descendants as non-Indians and forced them into the non-Indigenous population. By doing so, it has also stripped First Nations of thousands of members, shrinking the pool of Indians who are recognized as having inherent, Aboriginal, treaty and land rights, and to whom the government owes a fiduciary duty.

Canada’s claim that its 1985 legislative changes to the Indian Act “balance” individual and collective rights cannot withstand scrutiny. It is clear that the longstanding, and continuing, violation of the individual rights of First Nations women also violates the collective rights of First Nations to maintain their cultures and integrity, and not to be subjected to any form of forced population transfer. Canada’s - increasingly used - strategy of pitting women against

their Nations, is a way of evading its own responsibility. Canada's Indian Act sex discrimination contravenes the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, and UNDRIP.

This consultation is set to begin in February 2025; however a federal election is scheduled for 2025. It is unclear how, or if, it will be possible for the current government to meet its duty to address the second generation cut-off and the two-parent rule before a possible change in government.

Conclusion

In his recent visit to Canada, the Special Rapporteur on the Rights of Indigenous Peoples, Mr. Jose■ Francisco Cali■-Tzay, recommended that further amendments be made to the Indian Act "to eliminate the remaining discrimination" and that there should be "increased support for registration of women and their descendants who are newly eligible for status." The Special Rapporteur also recommended that Canada should create accessible remedies and compensation.

Despite some progress, Canada refuses to act to fully remove all sex discrimination from the Indian Act, even though it has been urged to do so repeatedly by UN treaty bodies, and even though this discrimination has been identified as a root cause of the human rights crisis of murders and disappearances of Indigenous women and girls. Indigenous women have been fighting to end this sex discrimination for more than fifty years. Unless and until the sex discrimination is fully removed, First Nations women and their descendants are restored to status and membership in their communities, and provided with reparations for the harms done – Canada's program of assimilation, which began at contact, will be successful. Now is the time for Canada to fully and finally end this discrimination.

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That the Government of Canada: Implement the CEDAW and Human Rights Committee recommendations to fully eliminate all sex discrimination from the Indian Act; Initiate a pro-active, effective and timely campaign to register all those entitled to registration including by: creating an information campaign to ensure that First Nations women and their descendants know that they may be newly entitled to status, and assigning sufficient resources to register them promptly; Include a new provision in the Indian Act to clarify that women and their descendants whose status has been restored, corrected, or improved by changes to the Indian Act are entitled to band membership, including in s. 10 bands; Implement the Senate Committee's recommendations from the "Make It Stop!" report to fully eliminate all sex discrimination from the Indian Act and to improve the registration process; Remove from the Indian Act the status categories of 6(1)(f) and 6(2), the second generation cut-off and the two-parent rule and establish a one-parent rule for transmission of status for both male and female parents; Remove bars to compensation for all forms of discrimination against First Nations women and their descendants caused by status provisions of the Indian Act, and amend Bill C-38 to include a provision to design and establish, with the full participation and collaboration of those affected, a mechanism permitting First Nations women and their descendants to claim and obtain compensation for the harms experienced due to Indian Act sex discrimination; Provide full reparations including compensation, apology, and public education on sex discrimination in the Indian Act; Respond, with a meaningful plan for action, to the McIvor and Grismer v. Canada and the Matson v. Canada petitions; and Provide sufficient funding, resources and land to First Nations to support new members, and to correct historic underfunding and under-resourcing of infrastructure and social programs.