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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by the International Human Rights Association of American Minorities (IHRAAM), a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 August 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Canadian First Nations disproportionate placement in foster care: Three times the level of residential school placements at their peak**

An estimated 67,000 children are placed in out-of-home care across Canada, of which more than 27,500 are First Nations children. This is three times the number of children that were placed in residential schools during their peak. And the number is increasing. One out of every ten First Nations children grows up within institutions or with foster parents, as compared to one out of two-hundred in the non-native population. Even though First Nations are only 8% of the total population in British Columbia, they are twice as likely to be investigated by child welfare agents. Once children are taken they tend to stay in the child welfare system longer and are more likely to be placed for adoption. Within BC, there are around 9500 children in foster care programs, more than half of whom are from First Nations.

In part the present situation can be blamed on the history of assimilation processes Indigenous people were put through by the Canadian government. Instead of growing up in a loving environment within the traditional extended family network, children were placed in residential schools at a young age. Being separated from their families, traditions, culture and language, physically punished for trying to exercise any of it, as well as, in many cases sexually, verbally and physically abused and put down for being “Indians”, most of these children then grew up without experiencing the love and care which are necessary for them to become independent, loving parents with parental skills. The result is a dysfunctional community.

While the importance of this history should not be underestimated, it is only part of the problem. An irrational dual system of care exacerbates the difficulties posed by past history. Multiple jurisdictions, redundancy, overlapping responsibilities, different funding-sources of child welfare on reserve, and the complications which come with it make the system morally and ethically bankrupt.

Family and child welfare falls under the jurisdiction of the provincial government. This includes legislation and funding. As a result, First Nations family support agencies receive their mandate from and have to work according to the standards and rules set out by the provincial government, just as any other provincial family support service agency. But unlike these provincial agencies they and their projects are not funded by the provincial government. Instead the Provinces argue that Indian and Northern Affairs Canada (INAC), a federal agency, is responsible for funding of child welfare services for First Nation families living on reserve. INAC accepts this responsibility through its First Nations Child and Family Services Program.

To complicate matters further, funding does not only come from two different sources, the two governments also have two different approaches in the management of the system.

While the federal funding system still favors a protective approach model by giving more funding in cases of the removal of the child, therefore encouraging this option, most Provinces support a preventive approach within their legislation, emphasizing least disruptive measures, preventive family support services, projects and programs and using the removal of a child as the last option. The First Nation agencies must work in a preventative capacity to meet their mandate, but can't because they receive funding mainly

** The International Council for Human Rights, an NGO without consultative status, also shares the views expressed in this statement

for removal of children. Although the number of such First Nation agencies is increasing, they are having difficulties striking a balance between having to meet the provincial standards of their mandates and the federal funding standards. This leads to a conflicting situation for First Nation agencies working on reserve.

Today the federal government provides funding according to Directive 20-1, which includes an archaic formula, or alternatively a new formula. The formula to be implemented is left to the Provinces. First Nations have not been permitted to participate in the decision-making process.

The formulas determine the level of funding provided to First Nation Services Agencies. According to the older formula there is only minimal funding available for least disruptive measures or prevention services. The newer enhanced formula gives the agencies at least a little more flexibility as to how they use the funds given to them. However, both formulas are so outdated that they calculate funding based on a fixed percentage of First Nation children in care as a basis for funding rather than using the actual need, which is far higher. To make matters worse INAC has not adjusted funding to the inflation rate since 1995. As a result, children on reserve receive 22% less funding than their counterparts off reserve, have far less access to services and the Provinces are unwilling to equalize funding.

While both governments mention the importance of culturally-sensitive approaches and the access of First Nation children to their culture even after their removal, these standards are impossible to meet with the funding provided.

After the removal of a child – which, due to the federal approach, is the only way to receive funding to improve the situation of the child – the director of the Ministry of Child and Family Development in BC has three options: the return of the child to its parents or the application at court for a temporary or a continued custody order. Custody means care and guardianship, while guardianship includes all rights, duties and responsibilities of a parent. Moreover, a continued custody order abolishes the need for parental consent to an adoption. The only consent necessary is that of the director, Art. 13 (3) Adoption Act. The temporary custody order is only possible for a limited amount of time (12-24 months), depending on the age of the child at the time of the removal. Afterward, the court often does not have a choice other than placing the child under the continued custody of the director due to the unlikelihood of a change in the parental situation and/or the lack of appreciation for traditional methods of raising children which is beyond the jurisdiction of the courts.

Removal of First Nation children predominantly happens because of situations of neglect, with inadequate housing conditions, poverty and parental substance abuse being the three main forms of neglect. Obviously, it is almost impossible for the parents to change the first two forms (poor housing conditions, poverty) since these factors are outside their domain of influence. They are a result of the lack of funding on reserve. Therefore, social investments for poverty reduction and housing improvement by the federal government are needed to inflict a change. While it can be argued that the third form of neglect (substance abuse) can be influenced by the parent even within the time period given by the temporary custody order, the situation on reserves has to be taken into consideration. A change requires access to services. There are far fewer support services available for people on reserve, often due to the remote location of many reserves combined with the fact that they receive limited benefit from Canada's $90 Billion annual investment in voluntary sector services for other Canadians.

In summary, First Nation children are faster removed from their parents' home and their families receive less support. In addition children on reserve receive less funding and once they and/or their siblings are in the system it is harder for them to be returned to their homes.

First Nation families are being left alone and are often helpless puppets within this system, which is supposed to protect them. Instead, they live in constant fear of their kids being taken away, due to their greater likelihood to be investigated and due to their living conditions on reserve. The outcome is another generation of children not growing up in their homes with their parents. This seems to be the tradition when it comes to First Nation treatment by Canada: whether intentional or not, First Nation communities seem to be kept at a dysfunctional level.

Even though the removal of children is in some cases justifiable, close to nothing is done to provide help to the parents to improve their situation and to support them in keeping a relationship with their children during the time of separation. Over the years there have been investigations on the situation, recommendations to change the situation and acknowledgments by the Canadian government as to the faults of the system to little avail.

The sad truth is that Canada does not live up to the national standards which they have set or the international standards they have agreed upon. The Convention on the Rights of the Child, which clearly states that a child is only to be removed from its mother in exceptional circumstances, is routinely ignored. Moreover, the existing funding situation leads to a factual discrimination of "status" children in comparison with non-First Nations children even though the Canadian Tribunal of Human Rights has disagreed by arguing that the two groups of children are not comparable due to different funding sources and therefore felt unable to rule on whether or not the situation was discriminatory.