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ВОПРОСЫ КОРЕННЫХ НАРОДОВ

Права человека и вопросы коренных народов

**Доклад Специального докладчика по вопросу о положении прав человека
и основных свобод коренных народов Родольфо Ставенхагена**

Добавление

МИССИЯ В КАНАДУ*

* Резюме доклада будет распространено на всех официальных языках. Текст доклада, прилагаемый к резюме, будет распространен на языке оригинала и на французском языке.

Резюме

Настоящий доклад представляется в соответствии с резолюцией 2004/62 Комиссии по правам человека и касается официального визита в Канаду, который Специальный докладчик по вопросу о положении в области прав человека и основных свобод коренных народов осуществил 21 мая - 4 июня 2004 года по приглашению правительства Канады, где он провел беседы с представителями федеральных властей, властей провинций и территорий, организаций коренных народов, с представителями академических кругов и с членами общин коренных жителей Новой Шотландии, Квебека, Манитобы, Онтарио и Нунавута. Ранее, в мае 2003 года, он посетил несколько общин исконных народов. Исходя из информации, собранной в ходе этих визитов, он представляет настоящий доклад о положении в области прав человека коренных народов в Канаде.

Коренные народы, к которым относятся исконные народы (индейцы), метисы и инуиты, составляют 4,4% от общего 30-миллионного населения Канады. В Конституционном акте 1982 года признаны их существующие исконные и договорные права, которые были затем подтверждены судами. В последние годы некоторые коренные народы заключают с федеральным правительством и правительствами провинций новые соглашения о земельных претензиях и самоуправлении. В своей новой, принятой в 1998 году программе в интересах коренных жителей, известной под названием "Объединим усилия", федеральное правительство обязалось укреплять связи между Канадой и коренными народами.

Специальный докладчик приветствует решимость Канады обеспечивать, чтобы коренные народы наряду с другими жителями страны пользовались плодами экономического процветания - цель, достижению которой федеральное правительство Канады и правительства провинций посвящают впечатляющее число программ и проектов и значительные финансовые ресурсы, а также решимость Канады устранить неприемлемые различия между коренными канадцами и остальным населением в области охвата образованием, занятости и доступа к основным социальным услугам.

Экономические, социальные и гуманитарные показатели благосостояния, качества жизни и развития у коренных народов, как правило, хуже, чем у остальных канадцев. Нищета, младенческая смертность, безработица, болезни, самоубийства, лишение свободы за уголовные преступления, зависимость детей от социального обеспечения, грубое обращение с женщинами, детская проституция значительно чаще встречаются среди коренных жителей, чем среди любых слоев канадского общества, а охват образованием, стандарты здравоохранения, жилищные условия, доходы семей, доступ к экономическим

возможностям и социальным услугам у этих групп, как правило, хуже. Канада полна решимости устранить эти различия.

Начиная с момента возникновения первых колониальных поселений коренные народы Канады постепенно лишались своих земель, ресурсов и культуры, в результате чего они вынуждены жить в условиях нищеты, лишений и зависимости, которые в свою очередь вызывают активные и подчас весьма решительные действия общественности в защиту их прав, за возвращение их земель и ресурсов, а также за предоставление им равных возможностей и самоопределения.

Коренные народы заявляют о своих правах на землю и природные ресурсы, а также требуют уважения их культурной самобытности, уклада жизни и социальной организации. Те соглашения о земельных претензиях, о которых ведут в настоящее время переговоры Канада и коренные народы, направлены на обеспечение определенности и предсказуемости и предполагают отказ коренных народов от их прав в обмен на определенные компенсационные пакеты, что в ряде случаев приводит к юридическим противоречиям и спорадическим конфликтам. Получение гарантированного свободного доступа к традиционным, связанным с землей промыслам, таким, как лесоводство, охота и рыболовство, остается главной целью коренных народов в контексте всестороннего пользования их правами человека. Это же касается ликвидации дискриминации и расизма, жертвами которых они по-прежнему зачастую становятся. В ряде случаев коренные жители, используя имеющиеся возможности, создают процветающие предприятия. Еще предстоит сделать многое для того, чтобы обеспечить такие возможности всем общинам коренных народов в Канаде в целях повышения их уровней занятости и доходов.

В заключительной части своего доклада Специальный докладчик излагает ряд рекомендаций, направленных на то, чтобы помочь заинтересованным сторонам преодолеть существующие разногласия и закрепить достижения, которых добились к настоящему времени коренные народы. Специальный докладчик, в частности, рекомендует: парламенту Канады, а также законодательным органам провинций принять новый закон о правах коренных народов в соответствии с предложениями, сформулированными Королевской комиссией по делам коренных народов; в ближайшее время в консультации с коренными народами ратифицировать принятую Международной организацией труда Конвенцию № 169 о коренных народах и народах, ведущих племенной образ жизни; обеспечить, чтобы дух и буква любых соглашений между коренными народами и правительством Канады ясно предусматривали, что при обсуждении любых вопросов особые конституционные права коренных народов являются неотъемлемыми и не могут быть объектом аннулирования, уступки или отказа; провести

оценку новых соглашений о самоуправлении; активизировать меры правительства по сокращению различий в развитии людских ресурсов между канадцами, относящимися и не относящимися к коренным народам, в областях здравоохранения, жилья, образования, социального обеспечения и социальных услуг; принять неотложные меры для решения серьезной проблемы высокого уровня заболеваемости диабетом, туберкулезом и ВИЧ/СПИДом среди представителей коренных народов; решать проблему распространенности самоубийств среди таких категорий жителей в качестве приоритетной социальной задачи; на приоритетной основе рассмотреть на заседаниях правительства вопрос об исключении из действующего законодательства положений, которые ущемляют интересы определенных категорий женщин из числа исконных жителей; отменить статью 67 Закона о правах человека; поручить Канадской комиссии по правам человека рассматривать вопросы, касающиеся прав человека исконных народов; и активизировать на всех уровнях усилия по сокращению непропорционально высокой доли мужчин, женщин и несовершеннолетних из числа коренных народов в общей численности заключенных.

ANNEX

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS
PEOPLE, RODOLFO STAVENHAGEN, ON HIS MISSION TO CANADA
(21 May to 4 June 2004)**

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Introduction

1. Pursuant to Commission on Human Rights resolution 2001/57 of 24 April 2001, which established his mandate, and at the invitation of the Government of Canada, the Special Rapporteur visited Canada from 21 May to 4 June 2004.
2. The Special Rapporteur would like to express his gratitude to the Government of Canada, and especially to Indian and Northern Affairs Canada (INAC), for its invitation and cooperation, as well as to the Assembly of First Nations for their support and to the many Aboriginal organizations and peoples that gave their time and provided useful information.
3. Out of Canada's total population of about 30 million over 1.3 million, or 4.4 per cent, are Aboriginal people, defined in the Constitution as Indians, Inuit and Métis. They comprise 52 nations or cultural groups, including 614 First Nation (Indian) communities.
4. Aboriginal people, who once lived freely on the land, are found in all of Canada's provinces and territories, and a large number also inhabit the metropolitan areas that concentrate the majority of Canada's population. The Constitution Act, 1982, recognizes the existing Aboriginal and treaty rights of Aboriginal peoples, and the courts have to some extent subsequently reaffirmed this recognition.
5. The Special Rapporteur is encouraged by Canada's commitment to ensure that the country's prosperity is shared by Aboriginal people, a goal to which the federal, provincial and territorial governments devote an impressive number of programmes and projects and considerable financial resources, as well as by Canada's commitment to close the unacceptable gaps between Aboriginal Canadians and the rest of the population in terms of educational attainment, employment and access to basic social services. This report on the main challenges faced by Aboriginal peoples in their quest to fully enjoy their human rights is based on information from various sources and on an exchange of views with federal, provincial and territorial authorities, leaders and representatives of indigenous communities and other indigenous, human rights and civil organizations.

I. SCHEDULE FOR THE VISIT

6. The Special Rapporteur visited Nova Scotia, Quebec, Nunavut, Manitoba and Ottawa, where he held consultations with government authorities at the federal and provincial levels. He met principally with Michael Horgan, Deputy Minister of Indian and Northern Affairs Canada (INAC) and several of his collaborators; Chantal Bernier, Assistant Deputy Minister of Public

Security and Emergency Preparedness (PSEP), Elisabeth Sanderson, Assistant Deputy Attorney-General, the Director General of Canadian Heritage, National Archives Canada, Privy Council Office, Foreign Affairs Canada, Indian Residential Schools Resolution Canada, Health Canada and a number of officials from other departments.

7. At the provincial level, the Special Rapporteur met, among others, in Nova Scotia, with the Deputy Minister of Aboriginal Affairs and the Associate Regional Director General of INAC, in Nunavut with several Deputy Ministers and officials of the territorial government. In Quebec he met with the Assistant Deputy Minister and other officials for Aboriginal Affairs and other departments of the provincial government.

8. The Special Rapporteur also visited several Mi'kmaq, Mohawk, Cree, Ojibway, Algonquin, Huron, Inuit and Métis communities in the country. Furthermore, he met with leaders of the Assembly of First Nations, the Congress of Aboriginal Peoples, the Métis National Council, the Native Women's Association of Canada and other organizations.

9. He also met with members of the Canadian Human Rights Commission, a number of non-governmental organizations, members of academic institutions as well as with Wayne Lord and Wilton Littlechild, members of the United Nations Permanent Forum on Indigenous Issues.

II. HISTORICAL BACKGROUND AND CONTEXT: A NEW DEAL FOR NATIVE PEOPLES

10. The situation of the Aboriginal peoples derives from the earliest colonial relationships between the native population and the European settlers, and their rights emanate in modern times from a number of founding legal documents such as the Royal Proclamation of 1763, followed over a century later by the Indian Act of 1876 whereby the Government assumed power to control all aspects of the lives of Indians living on reserves through a federally appointed resident Indian Agent. Aboriginal people lost most of their traditional lands during subsequent decades, and were subjected to a process of assimilation as individuals into Canadian society.

11. The Indian Act was amended several times but was never abolished; it remains the statutory regime for status Indians on reserve unless those First Nations are self-governing. With respect to fundamental recognition of Aboriginal rights, section 35 of the Constitution Act, 1982, recognizes and affirms "the existing Aboriginal and treaty rights" of the Aboriginal peoples of Canada, which, Aboriginal peoples assert, include their inherent rights to land, self-government and economic autonomy. The Constitution Act, 1982, also includes Canada's Charter of Rights and Freedoms.

12. In 1996, the Canadian Royal Commission on Aboriginal Peoples (RCAP) submitted its final report, the most thorough study on the situation of Canada's indigenous people ever carried out; its numerous recommendations have opened the way to the solution of long-standing problems afflicting the relations between these peoples and the various orders of Government in Canada. The Government of Canada responded to the challenge by creating in 1998 the Aboriginal Action Plan named "Gathering Strength", which it presented as a long-term, broad-based policy approach designed to increase the quality of life and promote the self-sufficiency of Aboriginal people.

13. Today, there are 2,787 First Nation reserves (land set apart and designated as a reserve for the use and occupancy of an Indian group or band) across the country, comprising 31,771.5 km².

14. In addition, between 1975 and 2004, nearly 500,000 km² of land have come under the direct control of Aboriginal groups through the comprehensive claims process. As a result of migration and urban spread, more than 50 per cent of Canada's Aboriginal population is now estimated to live in cities.

15. While the federal responsibility for First Nations people living on reserve lands, Inuit, Métis and non-status Indians rests with the Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, a number of responsibilities in relation to Métis and non-status Indians also rest with provincial governments. Numerous bands and communities are still struggling to obtain their own reserves.

III. HUMAN RIGHTS SITUATION OF INDIGENOUS PEOPLE IN CANADA: PRIORITY ISSUES

16. The human rights situation of the Aboriginal people of Canada results not only from the different geographical settings and their socio-cultural variety, but also from the different approaches of public policy and the complex set of laws and jurisdictions governing relations between the State and the various categories of Aboriginal populations.

17. The Canadian Human Rights Commission views the social and economic situation of Aboriginal people as among the most pressing human rights issues facing Canada. While the Commission is not mandated to monitor the human rights of First Nations under the Indian Act, as stated in section 67 of the Canadian Human Rights Act, it has called for special measures, such as an Aboriginal Employment Preferences Policy. Canada has not yet ratified Convention No. 169 of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries.

18. Aboriginal peoples are represented by numerous publicly recognized organizations such as the Assembly of First Nations, the Congress of Aboriginal Peoples, the Métis National Council, the Inuit Tapiriit Kantami, the Native Women's Association as well as regional and local councils of chiefs and others.

A. Treaty rights and other constructive arrangements

19. The specific rights of Aboriginal peoples are in part recognized in 11 numbered and other treaties between the Government and specific Indian nations signed during the nineteenth and part of the twentieth centuries. Land claims settlements or agreements concluded after 1973 are known as "modern treaties". Whereas these treaties recognize certain rights of First Nations, some Aboriginal representatives consider that they are framed so as to lead to the extinguishment or relinquishment of their ancestral Aboriginal rights in exchange for final compensation, something the texts of many modern treaties themselves appear to confirm.

20. Some First Nations have accepted this solution but others consider releasing their constitutionally recognized and affirmed rights through a negotiated settlement as unacceptable. Government authorities have assured the Special Rapporteur that the new treaties do not imply the extinguishment of rights, but a number of Aboriginal representatives who met with him consider that the modern treaties approach does in fact continue to lead to the "release" or extinguishment of rights. In 1999, in its concluding observations on the fourth periodic report of Canada (CCPR/C/79/Add.105) the Human Rights Committee recommended that the practice of extinguishing inherent Aboriginal rights be abandoned as incompatible with article 1 of the International Covenant on Civil and Political Rights, a recommendation that the Special Rapporteur fully supports.

21. In recent years these issues have been brought before the Supreme Court for legal interpretation, and certain landmark cases have contributed to reaffirming Aboriginal rights in various areas. It is claimed, however, that indigenous communities must often return to the courts to obtain compliance by the Government with earlier court decisions. This has led to almost endless and costly litigation so that all parties involved appear to be eager to find other more efficient solutions. A possible alternative would be legislation on Aboriginal treaty and constitutional rights. A step in this direction was taken in October 2004 with the introduction in the Senate of the First Nations Government Recognition Act (Bill S-16).

22. Concerning self-governance issues that are crucial for most of the Aboriginal peoples in the country, Canada announced the Inherent Right Policy in 1995, based on a general recognition of the inherent right of self-government as existing within the Constitution. The central

objective of self-government agreements is to provide clarity and predictability for the exercise of law-making powers by Aboriginal, federal and provincial/territorial governments. First Nations, however, remain sceptical.

23. Agreements between the federal, provincial/territorial governments and Aboriginal groups may bring benefits to Aboriginal peoples but the uneven negotiating power between the parties tends to tilt the balance in favour of the interests of the federal or provincial governments. This is especially true for the long-term release or extinguishment of Aboriginal rights to land and resources, which are recognized and affirmed in the Constitution. For instance, according to the Labrador Land Claims Agreement the Inuit will cede and release all their Aboriginal rights outside Labrador Inuit Lands. Yet the more than 40 Aboriginal rights rulings by the Supreme Court of Canada in the last 30 years have begun to redress the imbalance of negotiating power between governments and claimant Aboriginal groups.

24. Currently, Canada is negotiating at approximately 72 tables with 437 Aboriginal communities. In British Columbia, the Yukon, the Northwest Territories, Quebec and Labrador, self-government is being negotiated in conjunction with comprehensive land claims. In the Prairie provinces, Ontario and parts of Quebec, self-government is being negotiated as stand-alone. Negotiations are usually tripartite, involving the federal and provincial/territorial governments and the Aboriginal community or nation.

25. Most Inuit in the North share in one of several land claims agreements: the Inuvialuit Final Agreement (1984) in the western Arctic, the Labrador Inuit Land Claims Agreement (initialled by negotiators in 2003, but not yet finalized), and the Nunavut Land Claims Agreement Act and the Nunavut Act (1993), which created the new territory of Nunavut in 1999.

26. Following the James Bay and Northern Quebec Agreement of 1975 involving the Cree and Inuit of Northern Quebec, a further agreement known as “La Paix de Braves” was struck between Quebec and the James Bay Cree in 2002, by which Quebec’s socio-economic responsibilities were transferred to the Cree through the establishment of several joint councils that deal with economic development, forests, mines, and hydroelectric management. Because the original agreement was not accompanied by an implementation plan, Canada is currently engaged in implementation negotiations with Quebec and the James Bay Cree.

27. After a quarter of a century of negotiation, the Nisga’a Final Agreement between the federal, British Columbia and Nisga’a First Nation governments became effective in 2000, applying to 5,500 people and covering land rights to 2,000 km² in the Nass Valley. Through the

self-government provisions of the treaty, the Nisga'a have the legal authority to conduct their own affairs, including provisions for legal jurisdiction and the management of natural resources, in accordance with existing provincial legislation.

28. The Aboriginal signatories of all the modern treaties signed since 1975 have formed themselves into the Land Claims Agreement Coalition. They have called upon the federal Government of Canada to pay urgent attention to full and meaningful implementation of the socio-economic and developmental objectives of these agreements, warning that if conditions among signatory peoples continue to fail to improve meaningfully after the signing of such agreements, other Aboriginal peoples may conclude that there is no benefit flowing from such agreements, and would choose instead to litigate or pursue other approaches.

29. At the national level, the existing legal framework includes a number of distinct subcategories to which different sets of rights may apply. Thus First Nations are divided into status and non-status Indians, and the former in turn are distinguished in terms of being on or off reserve. The Métis and the Inuit claim land and territorial rights to which all of their identified members may not be equally entitled according to existing legislation. Between the cracks of these disparate sets of rights pertaining to the various legal subcategories are the rest of the Aboriginal people who may be First Nation members not recognized as status or non-status Indians, or unrecognized Métis or Inuit who identify themselves fully as Aboriginal people. In fact, most Aboriginal people of Canada, many of whom are urban dwellers, are not recognized as status Indians and do not fall under the jurisdiction of the Indian Act and INAC. They are often referred to as "the Forgotten People".

30. Specific human rights issues pertain to Indian status according to the Indian Act, such as the second and third generation loss of reserve membership if an Indian woman marries outside her community. This particularly sensitive human rights issue was inadequately addressed by the 1985 amendment to the Indian Act (Bill C-31, section 6), which according to the Aboriginal leaders has contributed to creating new divisions and new fears.

31. Similar concerns arise regarding matrimonial real property rights, which were denied under certain circumstances to Indian women living on reserves, an issue that the Native Women's Association raised with the Special Rapporteur. Despite several initiatives carried out by INAC to address it, the situation remains of great concern for many First Nations women in the country, and the Special Rapporteur considers that it deserves urgent attention.

32. While recognized in the Constitution as an Aboriginal people, the Métis have not been able to achieve recognition of their rights through modern treaties or arrangements. A number of court decisions, such as *Powley* in 2003, have affirmed certain Aboriginal rights of the Métis.

RCAP urges the Government of Canada to deal with Métis people, like all other Aboriginal peoples, on a nation-to-nation basis, and urges federal, provincial and territorial governments to proceed rapidly with nation recognition so that Métis nation(s) can negotiate treaties or agreements in the same manner as other Aboriginal peoples. These would specify the powers of their governments, the extent of their land base, the compensation owing to them for past injustices, their Aboriginal rights, and the nature of their fiscal arrangements with other governments.

B. Living conditions, the poverty gap and basic social services for Aboriginal peoples

Living conditions of Aboriginal peoples in Canada

Aboriginal people's living standards have improved in the past 50 years, but they do not come close to those of non-Aboriginal people. The Royal Commission on Aboriginal Peoples reports that:

- Life expectancy is lower and illness is more common;
- Human problems, from family violence to alcohol abuse, are more common;
- Fewer children graduate from high school, far fewer go on to colleges and universities;
- The homes of Aboriginal people are more often flimsy, leaky and overcrowded;
- Water and sanitation systems in Aboriginal communities are more often inadequate;
- Fewer Aboriginal people have jobs; many more spend time in jails and prisons.

Source: www.ainc-inac.gc.ca/ch/rcap/.

33. Among the 174 countries included in the United Nations Development Programme *Human Development Report 2003*, Canada ranked eighth, with a score of 0.937 (it had ranked first in 1999). When the Human Development Index (HDI) is calculated for Registered Indians, however, it reveals a substantially lower score for this population, which would be ranked about forty-eighth among the countries in the report, according to the information received by the Special Rapporteur from the Aboriginal organizations in Canada. Canada recognizes that key indicators of socio-economic conditions for Aboriginal people are unacceptably lower than for non-Aboriginal Canadians.

34. Poverty, according to the Canadian Council on Social Development, is one of the most pressing problems facing Aboriginal peoples, particularly in cities, where 60 per cent of Aboriginal children live below the poverty line. In Winnipeg, 80 per cent of inner city Aboriginal households reported incomes under the poverty line, a much higher percentage than other poor families.
35. Most First Nations and Inuit live in small, dispersed communities (less than 1,000 people). Although 83 per cent have year-round road access, 18 per cent live in communities isolated from health services, whereas 20 per cent have inadequate water and sewer systems. Aboriginal social and economic indicators are gradually improving, even if the land claims process has not provided instant solutions to the long-standing problems associated with Aboriginal poverty.
36. A major problem confronting Aboriginal people concerns housing which, for First Nations, is principally the responsibility of INAC. RCAP reports that houses occupied by Aboriginal people are twice as likely to be in need of major repairs than those of other Canadians. On reserves, 13,400 homes need such repairs and 6,000 need outright replacement. Aboriginal homes are generally overcrowded, and are 90 times more likely than those of other Canadians to be without piped water. On reserves, more than 10,000 homes have no indoor plumbing. About one reserve community in four has a substandard water or sewage system. Approximately 55 per cent live in communities where half of the houses are inadequate. The Special Rapporteur visited several Pimicikamak communities in Manitoba and was able to observe first-hand the substandard conditions of the homes of numerous community members (deteriorated units, toxic mould, lack of heating and insulation, leakage of pipes, etc.).
37. On the other hand, some negotiated agreements between the Government and First Nations have provided resources for repairs and the building of adequate new homes. This is the case of Mistissini, a relatively well-to-do Cree community in Quebec also visited by the Special Rapporteur, which due to its unique situation received considerable transfer payments from the Government. Yet it is unlikely that the RCAP proposal for a commitment to ensure that Aboriginal housing needs are fully met within 10 years will be achieved at the current rate of housing renewal in Aboriginal communities.
38. In Nunavut, the existing social housing units are among the oldest, smallest and most crowded in Canada. There is a severe housing shortage in Nunavut that adversely affects the health of Inuit, in particular of children, and it is estimated that 3,500 new units are needed over the next five years.

39. The overall health of Inuit continues to lag far behind that of other Canadians. Life expectancy is 10 years lower than the rest of Canada. Many health indicators are getting worse. Arctic research shows that changes in traditional diets lead to increased health problems, particularly of mental health, characterized by increased rates of depression, seasonal affective disorder, anxiety and suicide. Inuit leaders are deeply concerned that the housing, education, health and suicide situation have reached crisis proportions and are not being addressed by the federal Government.

40. The health status of Aboriginal people in Canada has been described by RCAP as both a tragedy and a crisis. Health Canada reports that the gap in life expectancy between Registered Indians and other Canadians is 6.4 years. Illness of almost every kind occurs more often among Aboriginal people than among other Canadians. For example, the rate of tuberculosis is 6 times higher, that of heart disease 1.5 times higher and that of diabetes 4 times higher than among other Canadians. The high rate of diabetes, which was mentioned to the Special Rapporteur in many communities, is related to rapidly changing lifestyles and food habits of Aboriginal people within a short generational span. New AIDS cases are significantly more frequent among Aboriginals, and a leading cause of death among Aboriginal children and youth is suicide, a severe social problem that requires long-term integrated policies at all levels. The suicide rate in Nunavut is 10 times higher than the national average.

41. Intrafamily abuse and violence are serious problems, but they are the tip of an iceberg that began to form when Aboriginal communities lost their independent self-determining powers and Aboriginal families lost authority and influence over their children. One promising approach has been the setting up of community healing lodges and healing centres to fill the acute need for residential treatment for people overwhelmed by social, emotional and spiritual distress. Child welfare is one of the services that Aboriginal people want most to control for themselves. There are numerous Aboriginal child welfare agencies, many of them funded by INAC across Canada serving status Indians. In Manitoba, Aboriginal children make up 21 per cent of Manitoba's population under age 15 but 78 per cent of the children in care of Child and Family Services.

C. The land question

42. Recognizing that Canada owes Aboriginal peoples lands and resources for both contemporary and historical reasons, RCAP called for enough land and resources to give them something adequate to call "home" - not just adequate physical and socio-economic space but a place of cultural and spiritual meaning as well to allow for traditional pursuits such as hunting and trapping, resources for economic self-reliance, and to contribute significantly to the financing of self-government. Despite some progress made, the Special Rapporteur recognizes that these objectives have not yet been met.

43. Over the years, First Nations have lost most of their ancestral lands and current reserves make up only a small fraction of their original habitat. It is clear that in any comprehensive settlement land rights and governing rights must be dealt with hand in hand, as in the Nunavut agreement.

44. The Comprehensive Land Claims Agreements define a wide range of rights, responsibilities and benefits, including ownership of lands, fisheries and wildlife harvesting rights, participation in land and resource management, financial compensation, resource revenue sharing and economic development projects. Since 1973, 16 comprehensive land claim agreements have been signed in Canada covering about 40 per cent of its territory, and over 60 negotiation processes are currently underway in nine provinces and three territories.

45. Through the Specific Claims process, First Nations negotiate with the Government rather than going through the courts. Of about 1,300 claims filed, only 115 are being negotiated and 444 have been resolved, while 38 are being reviewed by the Indian Specific Claims Commission, which provides an appeal mechanism for First Nations. First Nations have received more than Can\$ 1.7 billion as well as the ability to acquire almost 3.5 million acres of land. However, Aboriginal critics indicate that at the current rate, outstanding claims will take many centuries to be addressed and that the settlements represent in total only a tiny fraction of the ongoing value of the lands and resources being accrued by non-native governments and citizens.

46. Despite official promises to the contrary, and except in northern Quebec and the Northwest Territories, the amount of land allocated for use by Aboriginal people is extremely small. Aboriginal lands south of the 60th parallel (mainly Indian reserves) make up less than one-half of one per cent of the Canadian land mass. Métis land claims have not been dealt with in any significant way, except partially in Alberta, leaving the Métis without a land and resource base and with no way of settling their grievances at the national level. Some Aboriginal nations have not received any land allocations and there have been few mechanisms to allow for the extension of the land and resource base of First Nations as their populations and needs grow. In other cases, the lands concerned are being denuded of natural resources before Aboriginal claims are recognized and can be addressed. The Special Rapporteur agrees with the recommendation made by RCAP that a possible solution could be the establishment of regional treaty commissions and an Aboriginal lands and treaties tribunal.

**D. Prospects and problems of natural resource management
and environmental conservation**

47. The Special Rapporteur received numerous complaints from Aboriginal people regarding issues relating to their access to natural resources such as forests and fisheries. Their inherent right over natural resources is in many instances not recognized by the various orders of government and frequently the authorities apply other laws and statutes that limit the exercise of such Aboriginal rights.

48. For example, the Anishinaabe Nation in Ontario have experienced high levels of mercury contamination in their waters, fish and wildlife as a result of industrial wastes and poor forest management by non-Aboriginal business corporations, so that the health of the local population has been seriously affected. The Nation's Grand Chief insisted that "the health of the land and the people must be valued higher than the profit margins and stock values of multinational corporations", and that the community demands full partnership and participation in the management of their resources in view of their own sustainable development. Road blockades to stop people and equipment from engaging in activities that are not in compliance with Anishinaabe law, such as clear-cutting, began at Grassy Narrows in December 2002.

49. By the late 1980s, the combined effect of clear-cut logging, flooding and fluctuating water levels from the operation of dams and reservoirs, as well as the depletion of fish and game stocks, caused the Algonquins of Barriere Lake, Quebec, to organize a peaceful campaign of protests and blockades. Eventually, they signed a trilateral agreement with the federal and provincial governments that provides for local participation in resource management decisions. While the Government has provided resources to upgrade the housing stock in Barriere Lake, living conditions in the community are still below average, the housing situation is severe, and poverty and unemployment are high. Internal community divisions continue to plague negotiations with the authorities, and full implementation of the agreement has not yet been achieved.

50. As a result of two landmark Supreme Court decisions (*Sparrow* and *Marshall*) declaring that there is an Aboriginal right to fish for food and for social and ceremonial purposes, which takes priority over all other uses of fishery except conservation, the Department of Fisheries and Oceans decided to manage fisheries in agreement with 30 of the 34 affected First Nations; it also signed longer-term fishery agreements with 22 bands, and negotiations are continuing. The Special Rapporteur visited one Mi'kmaq fishing community in Nova Scotia, Indian Brook, where the Department's licensing regulations are not in line with the Supreme Court's ruling on Aboriginal fishing rights, leading to confrontation between Mi'kmaq fishermen and government officials, and to renewed litigation. RCAP wisely suggests that the federal administration should

proceed to protect Aboriginal rights in the light of Supreme Court rulings rather than to treat Aboriginals who exercise their rights as adversaries. In the opinion of the Special Rapporteur, that approach would also be consistent with international human rights practice.

51. Environmental concerns are widespread among Aboriginal peoples. The Arctic ecosystem is particularly vulnerable to the severe effects of global warming on the food supply, health and lifestyles of local Inuit communities. The Chair of the Inuit Circumpolar Conference, Sheila Watt-Cloutier of Nunavut, declared: “We have gone from the ‘ice age’ to the ‘space age’ in one generation The human rights of Inuit are under threat as a result of human-induced climate change. When we can no longer hunt on the sea-ice, and eat what we hunt, we will no longer exist as a people” and, referring to Persistent Organic Pollutants, added: “a poisoned Inuit child means a poisoned Arctic, means a poisoned planet”. The Special Rapporteur shares this very serious concern and would like to draw the urgent attention of the Government of Canada and all members of the United Nations to the need for concerted action in this remote area of the world concerning the human rights implications of environmental changes for Arctic peoples.

E. Aboriginals in the criminal justice system and related justice issues

52. The human rights of indigenous peoples are often measured by the performance of the criminal justice system. The Supreme Court of Canada finds “systemic discrimination in the criminal justice system”. (*Report to the Special Rapporteur*, Native Law Center of Canada, College of Law, University of Saskatchewan, August 2002). In its final report, the Commission on First Nations and Métis Peoples and Justice Reform of Saskatchewan notes that “the issues facing First Nations and Métis people - and the reasons they come into conflict with the justice system - are rooted in failures in the areas of education, health and economic development”. (*Legacy for Hope - An Agenda for Change*, vol. I (June 2004), p. 1). Whereas Aboriginal peoples argue that their own legal systems are recognized in the Constitution and have been affirmed by the Supreme Court, this recognition is not forthcoming in governmental policy or widespread practice, and it has not yet been implemented or recognized in ordinary legislation. The Native Law Center suggests the creation of an Aboriginal Attorney-General.

53. Innumerable studies note that the rate of crime is higher in Aboriginal communities. The arrest rate for Aboriginal crime is nearly double and the rate of incarceration nearly four times higher than the national average. In 1995, the Canadian Centre for Justice Statistics found that Aboriginal people were 5 times more likely to be charged with a crime in Calgary, 10.5 times more in Saskatoon, and 12 times more likely in Regina. While forming only 4.4 per cent of the total Canadian population, Aboriginal offenders make up 17 per cent of federal penitentiary inmates. The numbers reach critical levels in Manitoba, Saskatchewan and Alberta.

54. A number of complaints concerning alleged incidents of police brutality against Aboriginals were presented to the Special Rapporteur. In Saskatoon, several urban Indians were found frozen to death on the outskirts of the city. Some, who had made it back home alive, later told that they had been picked up by the police, harassed, and while in custody, dumped on some lonely road. They were lightly dressed and under the influence of alcohol. Colloquially, these procedures are referred to as “starlight tours”. In Manitoba, the Special Rapporteur was given documents and reports on several instances of police brutality and physical abuse of urban Aboriginals in Winnipeg, sometimes accompanied by racist and discriminatory behaviour by police officers. A number of cases of police abuses were also reported in Ontario, occasionally resulting in the death of the victim. In some of the reported cases, commissions of inquiry were held, and in at least one instance police officers were charged.

55. The Commission on First Nations and Métis Peoples and Justice Reform of Saskatchewan noted that many First Nations and Métis people in this province have lost confidence in the justice system. Despite some progress in this field, the Commission stated that high incarceration rates among Aboriginal people show little sign of improvement. In its final report, the Commission concluded that “racism in police services does exist and is a major contributor to the environment of mistrust and misunderstanding that exists in Saskatchewan”. Among its 122 recommendations, the Commission called for improved training programmes for officers who exhibit racist attitudes and a more aggressive strategy to recruit First Nations and Métis officers.

56. The Native Women’s Association of Canada and other institutions report that approximately 500 Aboriginal women have been murdered or reported missing over the past 15 years. According to government sources, Aboriginal women are five times more likely to experience a violent death than other Canadian women. Many of these reports signal discriminatory and gender bias in policing, as well as overrepresentation of native women in the prison system. Disproportionate numbers of Aboriginal women are held in federal prisons. Although they account for only 3 per cent of the female population in Canada, in 2003 they made up 29 per cent of the women in federal prisons. They are singled out for segregation more often than other inmates and suffer higher rates of inmate abuse. There appears to be a need for an Aboriginal programme strategy for women sentenced at federal level.

57. To deal with some of these matters, the Aboriginal Justice Strategy (AJS) is set to implement key elements of the Government of Canada’s response to the issues faced by Aboriginal people in the justice system. This programme addresses overrepresentation of Aboriginal people in the justice system, the lack of Aboriginal involvement in decision-making, and the lack of understanding of cultural differences by the justice system. Likewise, the

Aboriginal Justice Learning Network (AJLN) was established to act as a vehicle of communication between the current justice system and Aboriginal communities. Other programmes also emphasize the need for new social approaches.

58. Some Aboriginal communities are actively involved in managing their own justice systems. Thus, for example, the Mohawk Council established the Akwesasne Department of Justice, which provides court, probation, parole, native court-worker, mediation, community sentencing and legislative development services.

59. Nine years after the shooting in 1995 by the police of three unarmed Chippewa land rights demonstrators at Ipperwash, the Government of Ontario established a judicial inquiry into the circumstances surrounding the death of the unarmed demonstrator Dudley George, as called for by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Human Rights Committee. The establishment of this inquiry involving a wide range of Aboriginal parties is commendable. However, the Government of Canada (which is constitutionally exclusively responsible for “Indians and lands reserved for Indians”, and whose military confiscation of the Chippewas’ entire reserve lands in 1942 led to the demonstrations) is refusing to participate as a party to the inquiry, on the grounds that the inquiry lacks jurisdiction over federal matters, including “Indian lands”; but it has provided the inquiry with documents relevant to the events. This is a highly disturbing position, one that will limit the utility of this inquiry into governmental takings of First Nations reserve lands.

F. Educational needs and policies

60. Aboriginal peoples in Canada are still trying to overcome the heritage of a colonial educational system, which severely disrupted Aboriginal families, their cultures and identities. Children in particular were targeted time and again in official strategies to control and assimilate Aboriginal people. Residential schools, which for several generations Aboriginal children were compelled to attend away from their families, communities and traditional lands, did the greatest damage. They were forbidden to speak the only languages they knew and taught to reject their homes, their heritage and, by extension, themselves, thus contributing to the political, cultural and economic decline of many Aboriginal communities and people.

61. Canada is engaged in addressing the wrongs suffered in the residential school system by several generations of Aboriginal families through the Indian Residential Schools Resolution programme. Over the years, over 12,000 legal claims have been filed against Canada by victims of physical deprivation and abuse in these schools, some of which are dealt with through alternative dispute resolution mechanisms. Canada has carried out a remarkable action to address this issue even if, overall, monetary compensation packages to victims do not really

provide a meaningful response to language and culture loss endured by several generations of Aboriginal children. Numerous Aboriginal informants spoke to the Special Rapporteur about the transgenerational grief suffered because of the loss of culture, identity and meaningful parenting that has marked community life as a result of the residential school experience, and that may have been one of the factors leading to the high rate of suicide among Aboriginal adolescents.

62. While schooling on reserves is a federal responsibility, in other Aboriginal communities it is the task of provincial and territorial governments. In Quebec nine Aboriginal languages may be taught in Aboriginal community schools, whereas off reserve Indians are schooled in French or English. The James Bay Agreement provides the Cree and Inuit of northern Quebec with special powers regarding Aboriginal schools and teacher training. The Mi'kmaq have jurisdiction over their own education since the late 1990s. Other Aboriginal communities are negotiating similar arrangements with the government.

63. In Nunavut over half the adult population does not have a high school diploma and high school graduation rates are well below the national average. Unemployment is high and Inuit have not been integrated in the public civil service as rapidly as had been foreseen. Only 40 per cent of all school-age Aboriginal children were attending school full time. Ninety-six per cent of the more than 8,000 students in Nunavut are Inuit and Inuktitut language is taught in schools, yet no Inuktitut language school exists and there is no K-12 Inuktitut curriculum. As education is within the jurisdiction of the territorial government, and not a federal responsibility, Nunavut has not received any federal funds targeted for specific Aboriginal education.

64. A report on Edmonton schools indicates that minority and Aboriginal students are often victims of racism, whereas a study in Winnipeg notes that Aboriginal students are marginalized by the school system. Another national study indicates that there is very little teaching about Aboriginal people in Canadian schools, so that graduating students have almost no valid or accurate knowledge about Aboriginal peoples. It must be noted many provinces are making efforts to address Aboriginal education issues.

65. The Minister's National Working Group on Education reports that First Nation education is in a crisis. With some outstanding exceptions, there is no education system, no education accountability, no goals or objectives, and in many cases investments in Aboriginal education face comparative disparities. However, there are also some outstanding successful cases where the needs of remote communities are addressed and where First Nation cultures are celebrated in a positive and supportive learning environment. Efforts are underway to develop university level

education for Aboriginal students, such as the First Nations University of Canada and the Nunavut Arctic College in Iqaluit, or the Nisga'a House of Wisdom, which has already attracted international scholars.

66. The federal Canadian Heritage Department supports Aboriginal organizations, communities, cultures and languages based on true partnership, mutual understanding and inclusion, providing technical, institutional and financial resources. The Government has also decided to establish and fund a new Aboriginal Languages and Cultures Centre, as part of Canada's approach to preserve, revitalize and promote Aboriginal languages and cultures.

G. Self-government arrangements

67. Canada's policy of recognizing the right of Aboriginal peoples to self-government as an existing Aboriginal right within section 35 of the Constitution Act, 1982, was set out in the Inherent Right Policy of 1995, which includes an approach to implementation focusing on reaching practical and workable agreements on the exercise of self-government. Comprehensive land claims can now be negotiated together with self-government arrangements.

68. These arrangements may include different governance structures such as the public government of Nunavut and the Inuit in northern Quebec, sectoral self-government agreements which focus on only one or two jurisdictional issues, and more complex arrangements such as the Nisga'a Agreement, which involves a Nisga'a constitution and provisions for the establishment of Aboriginal courts.

69. Regarding the transfer of responsibilities, the Auditor General of Canada reports that INAC performance leaves considerable room for improvement. While INAC seems focused on fulfilling the letter of the land claims' implementation plans but not the spirit or the overarching socio-economic objectives to which Canada is committed in international human rights law, the Auditor General considers that implementation of the agreements is incomplete. Because the right of self-government cannot reasonably be exercised by small, separate communities, RCAP recommends that it should be exercised by groups of a certain size - groups with a claim to the term "nation", that will have to reconstruct themselves as nations.

70. Nine of the 14 Yukon First Nations have concluded land claims and self-government agreements with the federal and territorial governments. In the Northwest Territories, four of the seven Aboriginal groups have concluded land claims agreements, some of which are coupled with self-government agreements. Through a remapping of the way the North is governed, the

political make-up of Canada has changed significantly in less than a generation. However, Crown lands and resources (oil, gas) continue to be administered by Canada and are subject to regulation under federal laws.

71. The Grand Council of the Anishinaabe Nation in Treaty No. 3 wishes to negotiate an agreement with the federal Government that would include their right to make their own laws. They wish to reduce their dependency on government handouts and strict regulation by the Indian Act, complaining that they have little or no control over events that affect their lives. Disillusioned by the pace of progress, they demand that the federal Government negotiate with them in good faith.

72. In some communities, factional struggles over issues concerning management and resources have led to confrontation between community members and government officers. In the Mohawk community of Kanasatake, the Special Rapporteur was informed that people fear that a standoff such as the one that occurred during the Oka crisis in 1990 (when a protest over land issues was put down through military intervention) might be repeated. The parties involved in the conflict are seeking a solution, but Mohawk leaders are understandably concerned.

H. Towards Aboriginal economic development

73. The annual income of Aboriginal people is on the average significantly lower than that of other Canadians. Despite the existing legal instruments for affirmative action in the sector of employment for Native Canadians unemployment is still high, and has risen in relative terms in the last decade as the size of the youth population has increased. According to some estimates, more than 80,000 jobs are needed just to raise Aboriginal people's employment rate to the overall Canadian rate. An additional 225,000 jobs will have to be found in the next 20 years just to maintain the current level of Aboriginal employment. Many more will be required in order to see an improvement.

74. For Aboriginal peoples and many observers it is difficult to understand why they cannot protect, benefit meaningfully from, and dispose freely of the land and resources to which they have an inherent right that has been recognized in principle in the Constitution. This is probably the main obstacle to real economic development among First Nations, Métis and Inuit. As a result of land loss and severe limitations set by the various levels of government on the free use and continuing benefit of their natural resources, Aboriginal people have become increasingly dependent on distributive measures undertaken for their benefit by the federal or provincial governments. This in turn accounts for the large disparities in levels of living indicators between Aboriginal people and other Canadians.

75. Governments have worked with Aboriginal entrepreneurs to help make business development one of the sparks of economic growth in Aboriginal communities. Many have demonstrated their capacity to master a wide range of commercial skills as individual entrepreneurs and as managers of community-owned businesses. Levels of business formation have been high in recent years. About 10 per cent of Aboriginal people report business ownership or income from self-employment, which has increased markedly in the last decade, particularly among Aboriginal women.

76. There is no doubt that challenging opportunities have arisen for some Aboriginal people in Canada's North in the framework of recent economic activities such as mining, especially diamond mines and oil and gas extraction, along with pipeline development. In the Northwest Territories, most of the Aboriginal groups potentially affected by a pipeline have some say in resource management and environmental issues through settled land claims. In other cases, however, potential benefits for local Aboriginal communities are by no means clear.

77. INAC reports that in the past 10 years, the number of new businesses created by Aboriginals has exceeded those created by other Canadians by 105 per cent. There are now 20,000 Aboriginally-owned businesses in Canada, spanning all sectors of the economy. In 2003-2004 in the Atlantic region, First Nations and Inuit communities received approximately Can\$ 6 million in economic development funding. Through their companies, communities run regional airlines and are involved in forestry management, wood harvesting and processing. They run grocery stores and wholesale food distributing networks, motels, hotels, bowling alleys, golf courses and much more.

78. A notable success story is that of the Tribal Councils Investment Group of Manitoba, a company created by seven tribal councils in 1990, which owns interests in health management, beverage bottling and distilling, consumer outlets, banking, aviation, restaurants, and financial services.

79. Membertou Mi'kmaq First Nation in Nova Scotia is an example of a community investing funds in successful partnership with the private and public sectors, in mining, oil and gas, fishing, forestry, retail and professional services. The Special Rapporteur visited the community and observed the installations of an emerging industrial park on reserve land; he was also briefed by community leaders regarding the new employment and income opportunities for its members. Chief Terrance Paul explained that it was organized as a company to which all members of the community belonged, and that profits went to the community directly. Over the last quarter of a century, the population of the Membertou reserve has grown from around 300 people to over

1,000, and its land base has increased from 65 to 350 acres, while the number of housing units jumped from 56 to 218. Its main goal is to put an end to dependency on government handouts, based on a First Nation Progression Model that includes a multiple stage development plan.

80. INAC has applied a business approach to economic development programmes for Aboriginal communities. Its objective is to promote partnerships between these communities and private enterprises, with the various levels of government playing more or less a catalyzing role. According to the different regional circumstances, in some instances Aboriginal individuals may profit from their entrepreneurial activities, in others the Aboriginal community as a whole may become involved and may obtain collective benefits. Not all Aboriginal communities are equally well placed to take advantage of the global economy; in fact, most of them are unable to do so. The Special Rapporteur visited Aboriginal communities at both ends of the spectrum and realizes the difficulties involved in getting Aboriginal sustainable economic development going. He recognizes that all levels of government have a responsibility in this effort and calls upon all parties not to neglect the objectives of a human rights centred development, in particular given the circumstances in which most Aboriginal people find themselves today.

81. The St'at'imc community of Sutikalh in British Columbia is concerned about a major development that would bring about environmental damage and disrupt the continuity of St'at'imc culture and identity. One local leader states: "I still say no to the destruction that it would cause to our lands ... there is already enough damage done A lot of our history will be lost there ... our trees that are 100 years old, our medicines, the natural habitat of the black bears ... all of our huckleberry patches are gone ... from all the pollution in the area, the sewage and garbage ...". The nearby Aboriginal community of Lillooet has rejected a plan to create a mega-tourist resort on its territory. The local activists involved in protests against this development complain about having been harassed and unjustly persecuted. Similarly, the Secwepemc complained to the Special Rapporteur about harassment and persecution endured because of their opposition to the devastation and destruction of their land base caused by a resort development.

82. In Cross Lake, Manitoba, the Pimicikamak have protested over the years against the deep impact on their boreal forest environment, waters, traditional economy and way of life of a massive hydroelectric project established in the 1970s without consultation or consent. The Pimicikamak Chief informed the Special Rapporteur that "for more than 25 years our people have suffered the oppressive loss of a healthy economy based on fishing, hunting and trapping. We live in mass poverty with an unemployment rate of about 85 per cent. Our once life-sustaining environment has turned into a dangerous and deadly place. Hopelessness and despair have led to one of the highest suicide rates in the country". The Special Rapporteur was

able to observe directly the deplorable housing conditions and poverty prevailing at Cross Lake during his visit in 2003. The community has submitted a complaint to the Inter-American Commission on Human Rights.

83. It is encouraging that the 2004 Speech from the Throne recognizes that Aboriginal Canadians have not fully shared in the nation's good fortune and that conditions in far too many Aboriginal communities are described as "shameful". Canada's stated goal is to see Aboriginal children get a better start in life, to see real economic opportunities for Aboriginal individuals and communities, with greater economic self-reliance, a better quality of life. These objectives are reflected in the Federal Budget for 2004, which stresses Aboriginal human resource development, an urban Aboriginal strategy, Métis hunting rights, an independent centre for First Nations government, among others. Planned spending for federal programmes to Aboriginal peoples in 2004-2005 is Can\$ 8.81 billion, but Aboriginal critics argue that these funds are in large part consumed by federal government bureaucracy, and are also used to support dependency in the context of overall residual landlessness and to settle outstanding claims for land dispossession and residential school cases.

IV. CONCLUSIONS

84. **Canada's will to address the human rights challenges faced by Aboriginal peoples is expressed through a wide array of programmes and projects designed to close the human rights protection gap and to significantly improve the living standards as well as the human and social development indicators of Aboriginal people within the foreseeable future.**

85. **Despite the progress already achieved, Aboriginal people are justifiably concerned about continuing inequalities in the attainment of economic and social rights, as well as the slow pace of effective recognition of their constitutional Aboriginal and treaty rights, and the concomitant redistribution of lands and resources that will be required to bring about sustainable economies and socio-political development.**

86. **Priority attention must be given to the persistent disparities between Aboriginal people and other Canadians as reflected in higher poverty rates and lower than average health, educational, housing and welfare services for Aboriginal people, which continue to be among the most pressing issues facing Aboriginal people.**

87. **Whereas certain indicators point to some progress in new job openings, unemployment rates among Aboriginal people are alarmingly high and are not being addressed adequately in the current economic climate. It is encouraging that economic**

development opportunities are opening up for numerous Aboriginal communities, but employment is still severely limited on most First Nation reserves, as well as for Inuit, Métis and the urban Aboriginal populations.

88. Aboriginal people are disproportionately represented in the criminal justice system, where complaints about discrimination abound. A number of positive Aboriginal justice initiatives have been undertaken at the federal, provincial and local levels, but it is not clear as yet how far and how successful such policies have actually been.

89. Aboriginal education does not receive the resources it requires at the federal and provincial levels, resulting in high drop-out rates, low educational attainment and low quality schooling for Aboriginal students. Aboriginal cultures are not yet adequately represented in educational resources and the national curriculum, despite Canada's proven track record in multicultural education.

90. The specific needs of Aboriginal women have been neglected for too long. Matrimonial real property regulations continue to affect First Nation women on reserves unfairly, requiring legal reforms. Suicide rates, prostitution and child welfare issues are of particular concern among urban Aboriginals as well as on reserves.

91. The ambiguity surrounding the current status of Aboriginal rights in the country has led to controversial disputes and litigation in the courts, particularly concerning land rights. Recent land claims and self-government agreements aim at certainty and predictability, but the inclusion of clauses in land claims agreements requiring Aboriginal peoples to "release" certain rights, leads to deep concerns that this may only be another semantic term for the older "extinguishment" policy, despite official denials. In addition to adequate lands and resources, Aboriginal peoples also require certainty and predictability concerning the non-extinguishment of their inherent rights.

92. The current land base of First Nations reserves is insufficient for future growth and development, and must be expanded. Métis outstanding land claims have been neglected over the years and should be addressed as an urgent priority. Numerous regulations regarding resource use by Aboriginal communities (such as water, fishing, forestry, hunting and gathering) limit the full enjoyment of constitutionally recognized Aboriginal rights, and there is an urgent need for a thorough review of federal and provincial legislation in order to guarantee the full enjoyment of Aboriginal rights.

93. The settling of comprehensive land claims and self-government agreements (such as those of Nunavut or James Bay) are important milestones in the solution of outstanding

human rights concerns of Aboriginal people. They do not, in themselves, resolve many of the human rights grievances afflicting Aboriginal communities and do require more political will regarding implementation, responsive institutional mechanisms, effective dispute resolution mechanisms, and stricter monitoring procedures at all levels.

94. The effects of global warming and environmental pollution are particularly pertinent to the life chances of Aboriginal people in Canada's North, a human rights issue that requires urgent attention at the national and international levels, as indicated in the recent Arctic Climate Impact Assessment.

95. The cultures and identities of Aboriginal nations were destroyed during a long historical process the persistent legacies of which continue to impact adversely to the present day. Section 35 of the Constitution Act, 1982 establishes the basic framework for the full enjoyment of existing Aboriginal and treaty rights of Aboriginal peoples, but the interpretation of these rights and their implementing legislation has lagged far behind. While Aboriginal persons may eventually attain material standards of living commensurate with other Canadians, the full enjoyment of all their human rights, including the right of peoples to self-determination, can only be achieved within the framework of their reconstituted communities and nations, in the context of secure enjoyment of adequate lands and resources.

V. RECOMMENDATIONS

96. On the basis of the foregoing considerations the Special Rapporteur makes the following recommendations.

A. Recommendations to the Government

Legislation

97. That new legislation on Aboriginal rights be enacted by the Parliament of Canada, as well as provincial legislatures, in line with the proposals made by RCAP; and that the structure and functions of the public administration dealing with Aboriginal issues, such as INAC, be adapted to a human rights centred and participatory development approach; and that Canada fully implement and renew existing treaties in order to protect the rights and interests of Aboriginal people and reconcile the interests of society as a whole with the terms of the treaties.

98. That the Government and Parliament take all necessary steps, in consultation with Aboriginal peoples, to ensure the prompt ratification of ILO Convention No. 169.

Treaties and other constructive arrangements

99. That from a human rights perspective, it should be clearly established in the text and spirit of any agreement between an Aboriginal people and a government in Canada, and supported by relevant legislation, that no matter what is negotiated, the inherent and constitutional rights of Aboriginal peoples are inalienable and cannot be relinquished, ceded or released, and that Aboriginal peoples should not be requested to agree to such measures in whatever form or wording.

100. That an evaluation of the new self-government agreements be undertaken in conjunction with Aboriginal peoples themselves and independent legal, economic and other experts to allow for objective assessments of the achievements and problems of this policy thus far.

Poverty, social services, education and health

101. That the Government intensify its commendable measures to close the human development indicator gaps between Aboriginal and non-Aboriginal Canadians in the fields of health care, housing, education, welfare and social services.

102. That special attention be paid to the nexus between the Residential Schools restitution process, the transgenerational loss of culture and its attendant social problems such as adolescent suicide rates and family disorganization.

103. That concerted action be undertaken by all levels of government to guarantee the right to culturally sensitive and quality education of Aboriginal people and to decrease the number of school drop-outs and increase the number and quality of school graduates at all levels.

104. That culturally relevant education in Aboriginal languages be promoted at all school levels and made an objective of national educational policies, and that, in particular, article 23 of the Nunavut Agreement regarding education and training be implemented as a priority objective.

105. That adequate housing in a large number of Aboriginal communities be declared a priority objective, as recommended by RCAP, and that adequate credits, investments and

other resources be appropriated to solve this urgent problem within the shortest possible time frame.

106. That emergency measures be taken to address the critical issue of high rates of diabetes, tuberculosis and HIV/AIDS among Aboriginal people; and that Aboriginal suicide be addressed as a priority social issue by the relevant public social service and health institutions.

Lands and resources

107. That legislation be enacted and effective measures be implemented to expand the existing effectively usable lands and resources base of First Nations, Inuit and Métis communities to ensure their social, economic and cultural survival and well-being; and that regional treaty commissions and an Aboriginal Lands and Treaties Tribunal be established as recommended by RCAP.

Promotion and protection of human rights

108. That the Canadian Human Rights Commission be enabled to receive complaints about human rights violations of First Nations, including grievances related to the Indian Act; and that section 67 of the Human Rights Act be repealed, as requested insistently by various organizations, including the Human Rights Commission, to which the Government of Canada agreed in principle in 2003.

109. That the competences of the federal, provincial and territorial governments in their shared responsibility to promote and protect the human rights of Aboriginal peoples be redefined and coordinated so that such rights be effectively protected at all levels.

Sustainable economic development

110. That Aboriginal peoples should always be consulted in advance and be active participants in the design and execution of any development programme or project in their regions or territories or which may affect their living conditions, as provided for in ILO Convention No. 169; and that government and private enterprises engaged in such activities take into account the needs and interests of the affected Aboriginal people at all stages of these programmes and projects.

111. That the generation of sustainable employment of Aboriginal people and their education and training to this end, in their own communities and territories and also

within the broader regional economies in which they are located, with specific quantitative goals within a relevant time frame, be considered a social policy objective and not be left solely to market forces.

Aboriginal women

112. That the Government address with high priority the lack of legislative protection regarding on-reserve Matrimonial Real Property which places First Nation women living on reserves at a disadvantage.

113. That particular attention be paid by specialized institutions to the abuse and violence of Aboriginal women and girls, particularly in the urban environment.

Administration of justice and related justice issues

114. That efforts be increased at all levels to reduce and eliminate the overrepresentation of Aboriginal men, women and children in detention, in particular by establishing measurable outcomes, and that Aboriginal alternative justice institutions and mechanisms be officially recognized and fostered with the full participation of Aboriginal communities.

115. That the Government of Canada, in keeping with both its domestic constitutional jurisdiction and its international human rights obligations, immediately join and participate fully in the Ipperwash Judicial Inquiry.

International policy on indigenous peoples

116. That, in the field of international human rights of indigenous peoples Canada continue to play a leading role as a regular and widely recognized donor to the voluntary funds for indigenous peoples and to the International Decade; and that it adopt an even more constructive leadership role in the process leading to the adoption of the Draft Declaration on the Rights of Indigenous Peoples, as demanded by numerous Canadian indigenous peoples' organizations and expected by many other organizations worldwide.

B. Recommendations to civil society

117. That the various orders and levels of civil associations undertake joint and coordinated efforts to combat and eliminate anti-Aboriginal prejudice, racism, intolerance and stigmatization, just as is being done regarding visible minorities.

118. That Canada's political parties take stands in favour of the individual and collective rights of the country's Aboriginal peoples.

119. That the mass media provide a balanced and non-discriminatory view of the human rights needs and aspiration of Canada's Aboriginal people in order to help educate the general population about issues related to racism, discrimination, intolerance and social exclusion.

C. Recommendations to the international community

120. That the international community, and particularly the Arctic Council, take urgent action concerning the human impact of global warming and environmental pollution on Arctic peoples.

D. Recommendations to the academic community

121. That academic centres and researchers in Canada continue and expand their interest and activities concerning Aboriginal issues, particularly by strengthening research and training capabilities that may help promote the human rights of Aboriginal peoples, in collaboration with similar efforts in other parts of the world.
